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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 196[illegible]

No. [illegible]9

ROBERT SHELTON, PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JULY 18, 1960
CERTIORARI GRANTED MARCH 27, 1961

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 246

ROBERT SHELTON, PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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[fol. A] [Caption omitted]

[fol. B] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Grand Jury Impanelled on August 30, 1956,
Sworn in on September 4, 1956

Criminal No. 1215-'56

Grand Jury Original 2 U.S.C. 192

UNITED STATES OF AMERICA

v.

ROBERT SHELTON

INDICTMENT—Filed November 26, 1956

On January 6, 1956, in the District of Columbia, the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws, of the Committee on the Judiciary of the United States Senate, was conducting hearings, pursuant to the Legislative Reorganization Act of 1946, Section 102(1)(k), (60 Stat. 818), and to Senate Resolutions 366 of the 81st Congress and 58 of the 84th Congress, and to the Standing Rules of the Senate.

Defendant, Robert Shelton, appeared as a witness before that subcommittee at the place and on the date above stated, and was asked questions which were pertinent to the question then under inquiry. Then and there the defendant unlawfully refused to answer those pertinent questions.

The allegations of this introduction are adopted and incorporated into the counts of this indictment which follow, each of which counts will in addition merely describe the question which was asked of the defendant and which he refused to answer.

Count One

"Are you, sir, a member of the Communist Party U.S.A.?"

Count Two

"Did you ever have any conversation with Matilda Landsman?"

[fol. B1]

Count Three

"What did you tell them (your employers)?"

Oliver Gasch, United States Attorney in and for the District of Columbia.

A True Bill:

Paul Matthews, Foreman.

[fol. C] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

[Title omitted]

PLEA OF DEFENDANT—Filed December 3, 1956

On this 30 day of November, 1956, the defendant Robert Shelton, appearing in proper person and by his attorney Joseph L. Routh, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

The defendant is committed to the District of Columbia Jail.

By direction of F. Dickinson Letts, Presiding Judge, Criminal Court # Two, Harry M. Hull, Clerk, By Harold G. Dodd, Deputy Clerk.

Present: United States Attorney, By Joseph Lowther, Assistant United States Attorney, R. Frye, Official Reporter.

[fol. D] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Criminal No. 1215-56

[Title omitted]

MOTION TO DISMISS THE INDICTMENT OR FOR PRELIMINARY HEARING—Filed December 10, 1956

The defendant moves that the indictment be dismissed on the following grounds:

1. The indictment fails to plead the following essential and material elements of the offense:

a. the grant of authority pursuant to which the "Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws" presumed to exercise the powers of a committee of Congress and the nature and scope of any such grant of authority;

b. that the inquiry was within the scope of the authority of said Subcommittee;

c. the nature of the "question then under inquiry" to which the questions addressed to defendant are alleged to be relevant.

2. The indictment is void and illegal in that there were less than 12 members of the Grand Jury who concurred in finding the indictment who were free from prejudice or bias against this defendant, by reason of the facts stated in the affidavit of Joseph L. Rauh, Jr., attached hereto and made a part hereof.

Rec'd. 12-10-56—3:10 P.M.

Oliver Gasch, U. S. Attorney.
B. F.

[fol. E] In the alternative, the defendant should be granted a hearing at which he can offer proof by examination of the grand jurors and otherwise that bias or preju-

dice existed on the part of the requisite number of the grand jurors.

Joseph L. Rauh, Jr., John Silard, Attorneys for Defendant, 1631 K Street, N. W., Washington 6, D. C.

December 10, 1956
Personally served.

[fol. F] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

[Title omitted]

AFFIDAVIT—Filed December 10, 1956

Joseph L. Rauh, Jr., being duly sworn, deposes and says:

1. I am one of the attorneys for the defendant named in the above bill of indictment.

2. This affidavit is made in support of the Motion to Dismiss the indictment on the ground that it is void and illegal in that the grand jury which voted the indictment was illegally constituted as to this defendant.

3. I have been informed that the grand jury records in this Court show that 14 of the 23 members of the grand jury which voted the indictment against this defendant were, at that time, employed by the Government of the United States.

4. On information and belief, less than 12 members of the grand jury which voted this indictment were free from bias and prejudice against the defendant and able to exercise an independent judgment, by reason of the fact that they were employed by the Government of the United States.

5. The alleged contempt occurred before a Subcommittee of the Committee on the Judiciary of the United States Senate. The official, public transcript of defendant's testimony before the Committee shows that practically all of questions addressed to defendant concerned Communists, Communism or the Communist Party. One of the three [fol. G] counts in the indictment alleges that defendant refused to state whether he was a member of the Communist Party, U.S.A., and another is based on defendant's refusal to answer one of a series of questions relating to whether he had told his employers about his Communist connections. All of the above information was available to the grand jury and it is reasonable to believe that it was informed of it.

6. Communism, membership in the Communist Party, or association with members of the Communist Party, present and past, has discreditable connotations and subjects persons accused of such associations to disrepute, to economic losses, and to possible criminal or administrative action. Congress, in the Communist Control Act of 1954, 68 Stat. 775, 50 U.S.C. 781, 792a, declared the Communist Party to be illegal.

7. Since the grand jury's indictment was based on defendant's refusal to reveal whether he was a member of the Communist Party and give other information on his Communist connections, it would appear to the members of the grand jury that the case inherently touched the security of the Government. As employees of the United States Government and subject to security programs thereof, the grand jurors employed by the Government could not consider the facts presented to them with disinterested, free and open minds without bias and prejudice, as required by law.

8. All persons who are employed by the United States are subject to investigation and proceedings under Executive Order No. 10450, entitled "Security Requirements for Government Employment." The Federal Bureau of Investigation is required to investigate all cases arising under the order which involve any questions of Communist as-

sociations. Executive Order No. 10450 provides that the employment of any civilian employee must be "clearly [fol. H] consistent with the interests of the national security" and grants to the heads of departments and agencies, the final determination, subject to no appeal, of whether this standard is met. One of the factors to be considered in an investigation under the Order is "Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy." Other factors not enumerated in the Order may be and are considered in making a security determination under the Order. Views, statements, and actions in cases such as this are considered pertinent in proceedings under the Order.*

9. The effect of more than 9 years of operation of successive loyalty and security programs has been to instil in Government employees a fear of creating the appearance of sympathetic attitudes toward any person accused of Communism or Communist associations. This fear in a grand juror is so strong, so personal and so intense that it would prevent him from casting his vote impartially, as required by his Oath and by law, and amounts to an actual [fol. I] bias against any person accused of some act which might impede the hunt for supposed Communists.**

---

* Although the decision of the Supreme Court in *Cole* v. *Young* (351 U.S. 536) rendered on June 11, 1956, has narrowed the scope of Executive Order 10450, Government employee grand jurors not employed in "sensitive" jobs were not freed thereby from bias or fear. The Order itself has not been amended subsequent to that decision. The Government has announced that it supports legislation to continue the coverage of all employees, whether or not in sensitive jobs, within the security program. Furthermore, the Government employee whose job may not be classified as a security position may nevertheless reasonably anticipate the possibility of having a change in duties at any time which would subject him to the Executive Order. Under these circumstances, it is immaterial whether or not any of the grand jurors who were Government employees may at the time of this indictment have been technically, temporarily outside the coverage of the program by virtue of the decision in the *Cole* case.

** That fear generated by the loyalty and security program has been increased and accelerated by the enactment of such laws as the Internal Security Act of 1950, 64 Stat. 987, 50 U.S.C. 781, the

10. If the court will grant defendant a hearing pursuant to Rule 12(b)(4) of Federal Rules of Criminal Procedure, we expect to prove by examination of the grand jurors and otherwise that the grand jurors employed by the United States have known or heard:

(1) About relatives, friends or fellow workers who were kept under surveillance, investigated, suspended or dismissed under the loyalty and security programs;

(2) That many such persons were investigated, suspended or dismissed by reason of associations or actions which occurred in the distant past, or which were of short duration, or were infrequent or purely casual;

(3) That many such persons were investigated or suspended or dismissed by reason of actions or associations, not of their own, but of close associates, including relatives;

(4) That many such persons were investigated, suspended or dismissed by reason of actions or associations which bore little real relation to security.

11. We will further prove:

(1) That the net effect of these facts, known to [fol. J] the grand jurors, has been to create a climate of opinion, fear and intimidation among government employees that they would jeopardize their tenure or their job opportunities or provoke investigation by reason of any opinion or action or association which could be considered as evidencing the slightest sympathy with, or lack of hatred for, Communism or any other left-wing ism, including a vote against an indictment for refusal to answer questions concerning membership in the Communist Party;

McCarran-Walter Immigration Act, 66 Stat. 181, 8 U.S.C. 1181, the Communist Control Act of 1954, Public Law 637, 83rd Cong., 2d Sess., the Compulsory Testimony Act, Public Law 600, 83rd Cong., 2d Sess., the Bail Jumping Act, Public Law 603, 83rd Cong., 2d Sess., and the Harboring of Criminal Act, Public Law 602, 83rd Cong., 2d Sess.

(2) That these fears have been affirmed and strengthened by the almost daily press reports of the harsh and unjust operation of the loyalty and security programs;

(3) That this climate of opinion, fear and intimidation has affected personally those grand jurors employed by the United States so as to prevent their exercise of free will in voting on this case.

12. Affiant has personal knowledge that, during formal hearings under Executive Order 10450, persons under investigation have been asked their opinions of cases, such as the *Alger Hiss, Remington, Coplon* and *Rosenberg* cases, involving alleged Communist associations. If the mere opinions of persons who have not even participated in a case thought to affect the security of the government are treated by the authorities as relevant to a decision on security or loyalty status, the grand jurors would recognize that a vote against an indictment in this case would be harmful to their security status.

13. Affiant has personal knowledge that during formal hearings under Executive Order 10450 persons under investigation have been asked their opinions of Congressional investigating committees. The grand jurors would [fol. K] recognize that a vote against indictment of a person who had been cited by such a committee as contemptuous would be harmful to their security status.

Joseph L. Rauh, Jr.

Subscribed and sworn to before me this 10th day of December, 1956.

Mary C. Asay, Notary Public.

[fol. L] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Holding a Criminal Term

[Title omitted]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS THE INDICTMENT OR FOR PRELIMINARY HEARING—Filed December 10, 1956

1. *Failure of Indictment to Allege Material Elements of the Offense*

The indictment against defendant is indistinguishable from that in the case of *United States* v. *Lamont*, 18 F.R.D. 27 (S.D.N.Y., 1955), wherein Judge Weinfeld dismissed contempt of Congress indictments on the grounds, among others, that:

> "to validly charge a defendant with a violation of § 192 of Title 2, the indictment must plead the following essential elements: (1) that the committee before which the alleged refusal to answer occurred was duly empowered by either House of Congress to conduct the particular inquiry, setting forth the source of this authority; (2) that the inquiry was within the scope of the authority granted to the committee."

In an opinion of the Court of Appeals for the Second Circuit, rendered on August 14, 1956, Judge Weinfeld's decision on these grounds was affirmed. 23 Law Week 2087.

As to (a), *failure of the indictment to allege the source of the authority, if any, by which the subcommittee was acting or the nature and scope of such authority*, a reading of all the Acts, Resolutions and Rules included in the first paragraph of the indictment, all of which may be judicially noticed by this Court, shows that there is no grant anywhere [fol. M] therein of any power or authority to, nor in fact any mention of, a "Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws, of the Committee on the Judiciary

of the United States Senate." The allegation of the indictment that the Subcommittee was holding hearings "pursuant to" these Acts and Resolutions is self-defeating, for they confer no authority on any such Subcommittee. Here, as in the *Lamont* case, "One vainly examines the Public Law and Senate Resolutions set forth in the indictment to find any reference to the . . . Subcommittee, let alone any delegation of power to it" (18 F.R.D. at 34). For the reasons stated and the authorities cited by Judge Weinfeld, in the present case, as in *Lamont*,

> "If the Government contends, as eventually it must to sustain a conviction, that . . . [the Subcommittee] . . . was a duly authorized committee and engaged in conducting an investigation within the scope of delegated authority, whether it be a resolution of the Senate or the parent committee, should be alleged in the indictment" (18 F.R.D. at 33).

As regards point (b), *that the indictment omits a material allegation that the question under inquiry was within the scope of the authority granted to the Subcommittee*, this point is also governed by the *Lamont* case. *Cf. United States* v. *Rumely*, 345 U.S. 41. The reasons and authorities for this requirement are treated at length in Judge Weinfeld's opinion and in a Note, *Criminal Procedure—Contumacy of Witness Before Congressional Subcommittee—Sufficiency of Indictment Brought Pursuant to 2 U.S.C. § 192*, 24 George Washington Law Review 342.

As regards point (c), *the failure of the indictment to state the nature of the "question then under inquiry"*, this failure, when taken with the complete absence of any allegation from which defendant may determine the nature and [fol. N] scope of the authority of the Subcommittee before which he was called, renders it impossible to prepare a defense to the indictment. It is not discernable from the indictment how the questions set forth therein, such as "Did you ever have any conversation with a Mathilda Landsman?" or "What did you tell them (your employers)?", could be related to any legitimate Congressional inquiry. Perhaps such questions can be related to some legitimate "question then under inquiry"; perhaps the in-

quiry could be related to some authority granted to the Subcommittee; but the indictment leaves these matters to mere guesswork.

As stated by Judge Weinfeld (18 F.R.D. at 35):

> "The cornerstone of the Government's case in any prosecution under § 192 must be a lawfully constituted committee engaged in an inquiry within the scope of its authority when the refusal to answer occurred. This is the hard core of its case against the defendant and he is entitled to have it pleaded in the indictment."

Defendant challenged the jurisdiction of the Committee at his hearing, as he challenges it here. The indictment having failed to state the nature of the "question then under inquiry"; that "the question then under inquiry" was within any grant of authority to the Subcommittee; and what, if any, be the nature, scope or occasion of any grant of authority to the Subcommittee, either by the Senate or by its parent committee, it is manifestly impossible for defendant to prepare his defense. In the present posture of the case he cannot know how the questions he refused to answer might be pertinent to the question "under inquiry" before the Committee, nor how that question, whatever it may have been, falls within the authority, whatever it may be, of the Subcommittee. Under these circumstances, the indictment fails to allege material elements of the offense with sufficient particularity, so as to enable defendant to prepare his defense.

[fol. O] 2. *Bias and Prejudice of Grand Jurors*

Petitioner is entitled to a fair and impartial grand jury (*Cassell* v. *Texas*, 339 U.S. 282), acting as a "responsible tribunal." *Beavers* v. *Henkel*, 194 U.S. 73, 84. "Preservation of the opportunity to prove actual bias is a guarantee of a defendant's right to an impartial jury." *Dennis* v. *United States*, 339 U.S. 162, 171-172; *Morford* v. *United States*, 339 U.S. 258, 259.

Although this Court in *United States* v. *Emspak*, 96 F. Supp. 1010, *aff'd.* 91 U.S. App. D.C. 378, 203 F. 2d 54, and the related cases, denied a motion to dismiss or hold a hearing based on the presence on the grand jury of employees of the United States and its decision was affirmed

by a divided Court of Appeals sitting *en banc*, the Supreme Court granted petitions for certiorari in *Quinn* v. *United States*, 374 U.S. 1008, and *Bart* v. *United States*, 347 U.S. 1011, on the issue, among others, of the validity of the indictments returned by a grand jury which included government employees and the wives of government employees. Although the Supreme Court's disposition of the *Emspak*, *Quinn* and *Bart* cases did not require it to reach the grand jury questions raised (see *Quinn* v. *United States*, 349 U.S. 155, 170; *Emspak* v. *United States*, 349 U.S. 190, 202; and *Bart* v. *United States*, 349 U.S. 219, 223) the issue is again pending before the Supreme Court in the case of *Watkins* v. *United States*, 233 F. 2d 681, *cert. granted*, October 8, 1956.

Furthermore, unlike the affidavit attached hereto, the affiants in support of the motion to dismiss in the *Emspak* and related cases did not set forth and offer to prove, as they are set forth in the affidavit herein, (1) the net effect of the long operation of the government loyalty-security programs, in the years preceding and subsequent to the [fol. P] *Emspak*, *Quinn*, and *Bart* cases; (2) that attitudes of grand jurors in cases involving allegations of Communism would be considered relevant by security administrators; (3) that there was actual fear on the part of grand jurors that would prevent the exercise of their free will.

In view of the divided and uncertain decision of the Court of Appeals in the *Emspak*, *Bart* and *Quinn* cases on the grand jury issue, the differences between the affidavit and offer of proof herein from those made in *Quinn* and the related cases, and the present pendency of the question before the Supreme Court in the *Watkins* case, we urge this Court to grant the motion to dismiss or, in the alternative, a preliminary hearing at which the actual bias of the grand jurors could be shown.

Respectfully submitted,

Joseph L. Rauh, Jr., John Silard, Attorneys for Defendant, 1631 K Street, N. W., Washington 6, D. C.

December 10, 1956

[fol. Q] [File endorsement omitted]

[fol. R]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Criminal No. 1215-56

UNITED STATES OF AMERICA,
v.
ROBERT SHELTON, Defendant.

Washington, D. C.

Transcript of Proceedings—Friday, December 21, 1956

The above-entitled matter came on for hearing before the Honorable Alexander Holtzoff, United States District Judge, on motions to dismiss indictment, or for a preliminary hearing; for a bill of particulars at 10 o'clock a.m.

APPEARANCES:

On behalf of the Government: William Hitz, Assistant United States Attorney.
On behalf of the defendant: John Silard, Esq.

[fol. S] PROCEEDINGS

The Deputy Clerk. The case of United States v. Robert Shelton, Criminal No. 1215-56.

Mr. Silard. If Your Honor please, this is a contempt of Congress case, one of a group of cases pending in this District Court.

The question we raise as to the sufficiency of the indictment is of first impression in this jurisdiction, but it has been conclusively determined by Judge Weinfeld in the Second Circuit whose determination was affirmed in the Second Circuit in United States v. LaMont, the determina-

tion being that an indictment in a contempt case which fails to set forth the authority of the committee before which the alleged contempt is said to be committed and fails to set forth the question of the inquiry by the committee and was in the authority of the committee is a deficient indictment.

The Court. The Court of Appeals held the other way, did it not?

Mr. Silard. Not to my knowledge, Your Honor.

There was a third aspect of Judge Weinfeld's opinion which the Deutch case in the Court of Appeals did not follow.

The Court. Suppose you tell me first, which you have not done, what are the defects that you claim to be found in this indictment.

Mr. Silard. Yes, Your Honor.

[fol. T] In the first paragraph of the indictment, there are set forth certain Senate resolutions and public laws which the indictment states to be the authorizing laws and the language of the indictment is it was conducting hearings pursuant to these public laws and resolutions. Your Honor can take judicial notice of the contents of these resolutions and find nowhere in these resolutions or public laws there is any authority granted, nor even mention made of the committee before which the contempt is said to have been committed. In other words, on its face, the indictment is faulty because the authority from which the committee is pursuing its hearing is found not to be contained within that authority.

The Court. This sounds to me like a voice out of the past when an indictment was scrutinized with a magnifying glass and, if a comma was omitted, the defendant would go scot free. We have changed all that in 1946 when we adopted the new rules.

This indictment gives you sufficient notice as to what the defendant is charged with so that he can prepare for the trial.

Mr. Silard. But the indictment says the committee was holding hearings pursuant to these laws and resolutions and the reading of the laws and resolutions shows there is no mention of such committee. In other words, there is either an error or patent omission.

[fol. U] The Court. You can look it up. These are matters of public record.

I think this indictment, so far as this particular objection is concerned, sufficiently apprises the defendant of what he is charged with so that he can prepare for trial and so that if he should be prosecuted for the same offense on another occasion, he can plead double jeopardy.

Mr. Silard. May I add just one word, Your Honor. I have searched the public records and I have not found any public record, outside of the statute and resolutions cited, which even mention any such committee before which the contempt is alleged.

The Court. I know, but there is general authority for committees to appoint subcommittees.

Mr. Silard. That is true, Your Honor. I made the mistake in arguing this motion in skeleton form. It is really one problem for the defendant which Judge Weinfeld has discussed at length, and that is this: He is told he failed to answer questions pertinent to the question under inquiry but he is not told, and this is my second objection, what the question under inquiry was nor, in this case, told what the authority of the committee before whom he appeared was. In other words, he does not know what the question under inquiry was. He is not told that the question under inquiry was one authorized nor given any citation to the [fol. V] authority under which the committee was acting. In other words, we are in the dark here.

The Court. You do not have to cite law in an indictment or in any pleading, for that matter.

Mr. Silard. It is Your Honor's contention that it is mere surplusage in the first paragraph to recite these laws and resolutions since they are of no aid to the defendant and, as Judge Weinfeld has said and been affirmed, and I might say Judge Cecil held similarly in the Metcalfe case in Ohio and our memorandum attached to our motion cites that the very gist of the offense is failure to answer questions pertinent to a question under inquiry which is an authorized inquiry and within the authority of the committee.

The third aspect and the third defect which we allege, Your Honor, is that the question under inquiry is not stated in the indictment.

The Court. You said all of that once.

Mr. Silard. Second, it is not alleged that the question was within the authority of the committee and, thirdly, it is not alleged nor is anything alleged from which we may derive what the authority of the subcommittee was.

I would like to ask Your Honor if he feels that the indictment is nevertheless sufficient, to consider the possibility of a bill of particulars so that we may know before trial what authority this committee presumed to exercise, what [fol. W] the scope and nature of the grant of that authority was and what the nature of the inquiry was, because as of now we stand helpless to know what these questions were pertinent to, what the inquiry was, who authorized the inquiry, and what the scope of the authority of the committee was.

The Court. Mr. Hitz.

Mr. Hitz. Your Honor, the indictment sets out the authority for this committee to act; most particularly, Senate Resolution 366 is the resolution of Congress which expands very slightly the authority which was given to this committee, that is, the Committee on the Judiciary by the Reorganization Act of 1946. This special resolution is one which gives this committee or any duly authorized subcommittee the authority to make investigations for legislative purposes in the field of subversive activities. That can, of course, be obtained by anyone who is interested in it from the Senate of the United States.

We cite it and it can be obtained. That will, of course, outline the authority of this particular committee.

We state in the indictment that the Internal Security Subcommittee, briefly put, was the body of the Judiciary Committee which was conducting the particular hearings under the resolution which gave these powers to the full committee and, when we state in the fourth line that this subcommittee of the full committee was conducting hear- [fol. X] ings pursuant to the authority which created this power in the committee, we are, of course, stating that they were conducting hearings which properly were before that committee. That is the conclusion, of course, from what we have stated here.

When we state that the questions which were refused of answer were pertinent to the inquiry which was being conducted, we are, of course, stating these were proper questions and that it was before an inquiry which was authorized by the resolution.

The Court. Defense counsel's point there is that you do not state what the inquiry was about.

Mr. Hitz. That is right.

The Court. What do you say about that?

Mr. Hitz. That is a matter of fact that will come out at the trial and the proof. He is not entitled to have it in advance because the authority that this subcommittee was acting under is found in the resolution which I have already referred to, and there is no particularly defined inquiry less than the full authority to which this committee was restricted at this particular hearing.

The Court. I notice that Count 1 attempts to indicate that the subject of communism was being inquired into. Does the resolution creating the committee and the subcommittee authorize the subcommittee to investigate communism?

[fol. Y] Mr. Hitz. Not in so many words. In general, it does.

The Court. The subject was within the general jurisdiction?

Mr. Hitz. Yes. It comes in part 3 of the resolution which states, "the extent, nature and effects of subversive activities in the United States" and so forth. That, of course, embraces communism.

Let us assume that the particular inquiry at the moment might have been subversive activities in the field of education. That does not limit and does not restrict the full authority that was granted to this committee by the resolution and, therefore, the committee, through this subcommittee, could make all inquiries that were authorized by it to make. For the defendant to know what particular inquiry may have been uppermost in the minds of the committee, without restricting its general authority, would be of no help because the pertinency of the question asked would be as broad as the authority which the committee had, and that is stated in the resolution itself which may

be obtained, so that we say not only is the indictment sufficient as it stands to charge the offense, but it is sufficient, without further particularization, to inform the defendant of the charge that he must meet and to protect him from a second prosecution.

Thank you.

[fol. Z] Mr. Silard. May I say one more word, Your Honor.

I am not sure that Mr. Hitz and I really understand each other on this problem. The resolutions and public laws cited do not mention any subcommittee, that the indictment pleads, before which the contempt was committed. Are we to assume that all the authority granted in the public laws and resolutions was at some unspecified date and manner passed on to a subcommittee of the Judiciary Committee? I might say Fisheries and a lot of jurisdictions are included in the public laws. This is not just an idle problem here, Your Honor. The Senate Resolution 366, which is cited, grants broad jurisdiction of three specific sorts to the Judiciary Committee, not to any subcommittee. How do we know, and we do not know whether the subcommittee was granted all the authority.

The Court. That is a matter of evidence, is it not?

Mr. Silard. That is the authority which the Government will have to claim was being exercised and we are not told the very vital gist of the offense.

The Court. The burden will be on the Government to prove that the subject matter was within the jurisdiction of the subcommittee, and, if the Government does not succeed, the prosecution will fail.

Mr. Silard. It does seem to me, sir, if I might perhaps make this idle remark, that to set out the resolutions and [fol. AA] public law that are set out are more surplusage and of no particular help to us because to know what the parent body was but not to know the subcommittee is really to know nothing. That is the gist of our argument.

Judge Weinfeld reviews the authorities at great length and I saw no point in adding to our memorandum on the subject and, as I mentioned, Judge Cecil held similarly in the Metcalfe case.

The Court. The Court is of the opinion that the indict-

ment is sufficient. It must be borne in mind that the test of the sufficiency of an indictment, under the present simplified reformed procedure, is twofold. Does the indictment apprise the defendant of the specific charge that he has to answer? There is no doubt that the indictment meets this test.

The second test is: Would the indictment sufficiently protect the defendant in pleading double jeopardy if an attempt was made to prosecute him again for the same offense? This indictment meets that test also.

The decisions prior to 1946, which required some specific allegations of a technical character in indictments for various offenses, are no longer good law. They are outmoded and we try to get at the merits of cases.

MOTION TO DISMISS INDICTMENT DENIED

The motion to dismiss the indictment is denied.

Mr. Silard. May I ask Your Honor whether we must [fol. BB] file a formal motion for a bill of particulars or whether your denial also relates to that?

The Court. I am not going to pass on an informal request for a bill of particulars unless the Government consents that the matter be handled that way, because the Government is entitled to notice of such an application and is entitled to give it consideration.

Mr. Hitz. I will waive written notice of the bill of particulars, if Your Honor would care to hear it orally from counsel.

The Court. I shall be glad to hear it.

Very well, I will hear your application.

Mr. Silard. The request of the bill is for the same information as the first point of our motion to dismiss, that is, for the specific authority under which the subcommittee was said to be conducting hearings and, secondly, for the nature of the question under inquiry before said committee.

The Court. What do you say about that, Mr. Hitz?

Mr. Hitz. The resolution, No. 366, provides in two places for the duties of the full committee which were authorized by this particular resolution to be carried on by any duly authorized subcommittee thereof.

In that sense, I am supplying at this moment the authority for the subcommittee named in the indictment to carry [fol. CC] on the purposes of the full committee contained in the resolution.

We will prove, at a later time, the transfer of the authority contained in this particular resolution from the full committee to the subcommittee.

As to the second asking, the Government contends, and the indictment states, that the inquiry being conducted was pursuant to this resolution. We do not feel, and it is not the case, that there was any smaller, more limited inquiry being conducted.

This committee was conducting the inquiry for the purposes contained in the resolution and no lesser purpose so that, in that sense, the asking No. 2 of counsel will be supplied by his reading the resolution.

The Court. It seems to the Court that the Government has supplied the bill of particulars orally.

Mr. Silard. Except in this one sense: that I asked, in my motion to dismiss—perhaps I didn't do it well—the nature and scope of the grant to this committee. That has not been given to us.

MOTION FOR A BILL OF PARTICULARS DENIED

The Court. I think it has been sufficiently given.

I will deny the motion for a bill of particulars in view of the fact that the oral statement just made by counsel for the Government will be sufficient compliance if the motion were granted. You have the particulars.

(Thereupon the hearing was concluded.)

[fol. DD] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. EE] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Criminal No. 1215-56

[Title omitted]

ORDER DENYING THE ORAL MOTION FOR A BILL OF PARTICULARS —December 21, 1956

On this 21st day of December, 1956, came the attorney of the United States; the defendant by his attorney, John Silard, Esquire; whereupon the oral motion of the defendant, for a bill of particulars, coming on to be heard, after argument by counsel, is by the Court denied.

By direction of Alexander Holtzoff, Presiding Judge, Criminal Court #1, Harry M. Hull, Clerk, By C. J. Rumsey, Deputy Clerk.

Present: United States Attorney, By William Hitz, Assistant United States Attorney, J. Rawls, Official Reporter.

[File endorsement omitted]

[fol. 1]

IN UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Criminal Action No. 1215-56

UNITED STATES OF AMERICA,

—vs.—

ROBERT SHELTON, Defendant.

Washington, D. C.

Transcript of Proceedings—Monday, January 14, 1957

The above-entitled cause came on for trial before the Honorable Ross Rizley, a District Court Judge, at 10:00 a. m.

APPEARANCES:

William Hitz, Esq., Assistant U. S. Attorney, for the Government.

Joseph L. Rauh, Jr., Esq.; John Silard, Esq., for the Defendant.

[fol. 4] PROCEEDINGS

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Criminal No. 1215-56, United States v. Robert Shelton.

What says the Government?

Mr. Hitz: The Government is ready.

The Court: What says the defendant?

Mr. Rauh: The defense is ready, sir.

The Court: Do you want a jury in this case?

Mr. Rauh: No, sir, we waive the jury, and we have agreed with Mr. Hitz that we will waive the jury.

The Court: Very well. Let me dispose of the jury here, if I may.

Ladies and gentlemen of the jury, the parties in this case have waived a jury: it will be tried by the Court. I think that so far as this Court is concerned, I will have no more jury cases to try. I believe I mentioned that tomorrow my assignment will be a non-jury assignment of civil matters.

I want to say to you, ladies and gentlemen of the jury, that I appreciate very much your services here during the two weeks we have been working together. I congratulate you on the fine attention you have given to these lawsuits. There is no higher duty of citizenship, there is no greater privilege than being able to serve as members of a petit jury.

I wish all of you the best of everything for the ensuing new year. It is altogether likely that I wouldn't be seeing [fol. 5] you very soon. My assignment here is only for a month. Thank you very much for your services, and you will report to the jury lounge, because I expect some of the other judges may need your services. Thank you.

You may proceed, Mr. Hitz.

Mr. Rauh: Your Honor, there is a preliminary matter, unless Mr. Hitz intended to explain it.

We have issued a subpoena to the Clerk of the Senate Internal Security Committee returnable this morning at 9:30. I do not see the Clerk, and so far as I know, Mr. Hitz has made no suggestion to quash the subpoena. Therefore, we have checked, and personal service was made upon the Clerk. The documents we requested are relevant to the very initial stages of the case. I have no further light to shed on this matter. In one previous case I have tried with Mr. Hitz, he has shed some light on the subpoena I had served. I don't know, maybe he can shed some light on this.

Mr. Hitz: I have no information about the service of the subpoena or the fact that it was served or anything else about it, Your Honor. I can say this, that there were subpoenas served upon certain employees of the subcommittee and of the full Judiciary Committee and on the Clerk of the Senate in another case. In that case we propose probably to take the action of moving to quash. It may be that

the persons that were served by Mr. Rauh in this case got [fol. 6] the two confused and postponed appearance until we did move to quash. That could be.

The Court: Well, we had better find out before we proceed.

Mr. Rauh: I would appreciate that, sir.

The Court: Mr. Marshal, will you check up on the witness who was subpoenaed and see what has happened?

Mr. Hitz: Your Honor, Mr. Sourwine, who, as you know, is the counsel for the subcommittee and who usually is in close touch with happenings of the subcommittee, is here today. He said he never heard of the subpoena, and presumably he would have heard of it last Friday or this morning.

The Court: What does the record show about the service of it, Mr. Rauh? Does the record show it was served?

Mr. Rauh: Yes. We have just checked this morning with the Marshal's office, and the Marshal's office informs us it was personally served on Dotty Baker, clerk of the subcommittee.

The Court: As of when?

Mr. Rauh: Thursday afternoon, sir.

The Court: I see. Well, we will find out before we proceed.

You have no information about it, Mr. Sourwine?

Mr. Sourwine: No, Your Honor, I have not.

I was told by Mrs. Baker on Thursday that she had re- [fol. 7] ceived the expected subpoena in the other case that Mr. Hitz has mentioned. That is the only information that I have.

Mr. Rauh: Is it all right if Mr. Silard goes with the marshal, because he just checked downstairs a few minutes ago, and he could find the man he checked with and might speed it up?

The Court: Yes, I think it might, but I think we will withhold here for a little while, because we probably wouldn't want to start to try the case and then find we didn't have the witness who was subpoenaed as a proper witness.

Mr. Rauh: I would appreciate it if we could recess until this is straightened out.

(Whereupon, a short recess was taken.)

The Clerk: All witnesses in this case, that is, witnesses on both sides, follow the marshal to the witness room.

The Court: Is Mrs. Baker here?

Mrs. Baker: Yes, I am.

The Court: Mrs. Baker, the records of this case show you were served with a subpoena last Thursday, to be in court at 9:30 this morning.

Mrs. Baker: I received this Friday, and I thought it was just one subpoena, and there are two.

The Court: Either Thursday or Friday.

What is your excuse for not being here under the [fol. 8] subpoena?

Mrs. Baker: I looked at it, and there is one for Seymour Peck at 10:00 o'clock, and I just assumed this was wrong. There are two of them.

The Court: Of course, you understand the courts have a lot of business to transact, and if we have to wait after the time to start, and we were delayed a little bit by the weather this morning anyhow, we can't transact the business expeditiously. I am going to excuse you this time, but I want you to understand a subpoena from the United States District Court is important and it is not to be ignored by anyone, even though they may be an employee of the United States Senate or the House of Representatives, and I have had some experience myself serving there. Do you understand that?

Mrs. Baker: Yes, sir.

(All witnesses were excluded from the courtroom.)

The Court: Are you ready to proceed, Mr. Hitz?

Mr. Hitz: Yes, I am, Your Honor.

The Court: Very well.

Oral Motion to Quash Subpoena

Argument in Support of Motion

Mr. Hitz: Your Honor, I would like to make an oral motion to quash this subpoena. It is oral for the reason that I have not had sufficient notice to prepare a written motion [fol. 9] to quash. I am prepared to argue it, and I can sub-

mit to the Court, if the Court would care to have it, a memorandum and a motion in a similar case. I, of course, hesitate to do that because it isn't captioned in this case, and there are certain variations in the facts and the applicable law between that case and this one. So I would prefer to make it an oral motion.

The Court: As far as the Court is concerned, I am perfectly willing to hear you on an oral motion. You can state your grounds, of course, and what you expect to supplement the record with. I take it you will supplement the record with a written motion.

Mr. Hitz: Yes, I will, Your Honor.

The Court: Very well.

Mr. Hitz: Your Honor, this subpoena calls for "all records, files, memoranda, documents, or other writings, relating to Robert Shelton," end of quotation, and I am now summarizing it, which were in the possession of the subcommittee at the time that Mr. Shelton actually appeared before the subcommittee on January 6, 1956, from which appearance he was cited for contempt, and that is the case to be tried.

It is clear from the nature of this subpoena that the confidential documents of the committee, and perhaps even of the Senate itself from other committees but in the possession of this committee, would not be excepted from [fol. 10] this subpoena. In fact, it is very likely that it is precisely that information which the defendant now seeks to obtain in answer to the subpoena, for the very obvious reason that anything that is public could be obtained by him either from purchasing it in printed form from the Government Printing Office or on leave from the committee itself. So that it is confidential material that would be embraced within it and possibly nothing but that.

The Senate has a rule, Rule No. 36, Part 4, which states as follows:

"Any Senator or officer of the Senate who shall disclose the secret or confidential business or proceedings of the Senate shall be liable, if a Senator, to suffer expulsion from the body and, if an officer, to dismissal from the service of the Senate and punishment for contempt."

The Court: The Court is familiar with that rule.

Mr. Hitz: Your Honor, of course, is well aware that this lady could not respond to this subpoena without being released from the penalties of that rule. It would be necessary for her to have a resolution passed by the Senate permitting certain of the material sought to be produced in court by her. However, it is the practice of both Houses [fol. 11] of Congress that material which is not public material, even though it not be surrounded by any confidential safeguards, will be produced on a subpoena of a court by an employee of either the Senate or the House only if there has theretofore been made a finding by the court that that material is material to the trial of a lawsuit before the court, a preliminary finding of materiality.

In addition to that, the law in the Supreme Court and in the various circuits, and it has been affirmed and reaffirmed in this circuit, is that a subpoena duces tecum which does not call for evidentiary material may be quashed by the Government upon whom it is served. That doctrine was announced in the Bowman Dairy case and it has been followed uniformly in the District Courts and in the circuits since. So that, not only to comply with the rule of the Senate, so as to protect the person who is possessed of this material, but also to protect the Government generally from subpoenas which are really fishing expeditions, it would be necessary in order to enforce a subpoena, whether it be upon the legislative branch or upon someone else, in the face of a motion to quash, that the information sought, the documents sought, be evidentiary.

Now, of course, evidentiary means that it is admissible or probably admissible in the trial of the particular case. I am now coming to this conclusion which I would like [fol. 12] Your Honor to follow me in and to adopt, and that is that there is no issue in this case upon which the information sought here would be material. If it is not material, it would not be admissible on behalf of the defendant. If it is not admissible, it is not evidentiary. If it is not evidentiary, the Bowman Dairy case says that a motion to quash the subpoena will prevail over the subpoena.

Now there are certain issues in this case which I know will be presented by the counsel for Mr. Shelton upon

which it will be claimed that this material sought from the committee would be admissible and, therefore, evidentiary and therefore enforcible. We do not believe that to be true. First of all, let us take the matter of the legislative purpose of the hearing.

The law on that subject, announced first in the case of McGrain *v.* Dougherty, is that where the Congress, through one of its committees, is making an investigation in a subject that is open generally for the action of Congress to legislate on, and where the particular committee that seeks to make the investigation is authorized by Congress to enter that field, that a legislative purpose in fact for the particular sessions and the particular investigation will be presumed. That doctrine has been followed many times in this district, in this circuit. There has never been a departure from it. It was most recently—I wouldn't say most [fol. 13] recently, but in a recent Circuit Court opinion in this circuit, the Morford case, our Court of Appeals not only announced again this doctrine of presumption of legislative purpose, but quoted from McGrain v. Dougherty, or cited it, on the theory that the Supreme Court had spoken on this subject and had never departed from that doctrine.

I am well aware, of course, that it has frequently been sought on behalf of defendants situated as is this defendant to assert to the trial court and to the appellate courts that the particular hearing before which he committed his alleged contempt was in fact being conducted without a legislative purpose, and that efforts have frequently been made to show that exposure, blacklisting and other motives of that sort were really the most important and perhaps the sole reason for him being called before the committee and being asked the questions that were asked.

Your Honor, I am sure, is aware of the numerous cases in which the defense of exposure to attempt to rebut the presumption of legislative purpose has been rejected by the courts. It was rejected in the Dennis case, I believe. It was rejected, I am certain, in the Lawson and Trumbo cases and in the Morford case, all in this circuit.

I have so far been discussing whether or not material in the hands of the committee would be admissible on be-

half of the defendant on the question of legislative purpose. [fol. 14] I say that it is not material to that issue.

The Court: Let me ask you this. Some questions, of course, upon the face of the record in these cases, without further explanation or without additional testimony, would be sufficient, but some of the questions may be asked where it is necessary to supplement by way of evidence as to whether the committee really had jurisdiction to go into that particular question or under the first amendment. You would put testimony on here, I take it, if there were some questions that would not upon their face indicate contempt. You would put on some additional evidence to show the reason for asking that question. Why wouldn't the defendant have a right to know what that testimony is?

Mr. Hitz: Well, I can answer that by giving an example from this particular indictment. One of the counts is the question, "Do you know Matilda Landsman," I think.

The Court: Yes, that is what I had in mind. Count 2, for instance, says, "Did you ever have any conversations with Matilda Landsman?" The way I look at it now, that question, within itself, would have to have some additional proof to show its pertinency.

Mr. Hitz: Yes, it would. That is not pertinent on its face, and we would offer proof.

The Court: Very well.

Mr. Hitz: With respect to that, we would offer this proof, [fol. 15] and I assume that it is not improper for me, even though it is a matter that will come up in the case, to mention it by way of illustration, and may I do so?

The Court: You may do so.

Mr. Hitz: We will offer proof that Matilda Landsman was a member of the Communist Party who had certain instructions with respect to attempting to infiltrate into the linotype part and duties of the newspaper field, that she was given special instructions to do so, and she became skilled enough to obtain that sort of work. If we can show that, we can show that it would be material to the purposes of this subcommittee to find out if there was any connection between her and the defendant, who, when he appeared as a witness before the committee, was suspected of having been a member of the Communist Party.

The Court: That is the point exactly. You not only would show, Mr. Hitz, that she was engaged in this sort of work, but I would think the Court would want you to go a little further than that, to show that the defendant knew that she was engaged in that sort of work.

Mr. Hitz: Oh, yes. And then we get back to the question, and the question is, "Did you have a conversation with her," and that would be the beginning, then, of an investigation of any connection between the two of them, and finally, were they conspirators in the same—

[fol. 16] The Court: Yes, that is exactly right. Of course, you can prove that by what I would say is hearsay evidence, so to speak, that she was a communist or was engaged in this work and also that the committee had information that the defendant knew that she was engaged in this work. Now you can prove that part of it by hearsay. But if you had information up there before the committee, if you had some documentary evidence of some kind, if the committee had some documentary evidence up there of some kind showing the facts, wouldn't the defendant be entitled to have that documentary evidence?

Mr. Hitz: You mean—

The Court: In other words, maybe the Government might put the wrong interpretation on it; maybe it is subject to two interpretations. Wouldn't the Court have a right to see it for the purpose of determining the interpretation that was being put on it by the Government, or whether there is some interpretation they might put on it, and wouldn't it be the Court's duty then to make the determination?

Mr. Hitz: I don't think so. If there is a prima facie showing, so to speak, of the material that was before—

The Court: Yes, prima facie showing, but, of course, there has got to be a prima facie showing or you wouldn't have a case, but any defendant is entitled, isn't he, to [fol. 17] defend against a prima facie showing? Suppose you had a document up there. Suppose you had a prima facie showing of some kind that the Government had certain information. On the other hand, you had some other evidence up there to the effect that the defendant didn't know anything about this woman. Wouldn't he be entitled to that record down here in his defense?

Mr. Hitz: I think not, and I wonder if I could answer by way of illustrating it further on the facts Your Honor supposes. Let's assume that the committee had information that I had mentioned concerning Matilda Landsman. Your Honor has already conceded, as necessarily the law now makes it so, that it can be hearsay. That was stated by Judge Holtzoff and adopted by Judge Bastian in the Circuit Court in the Barenblatt case.

Now if the committee was also possessed of information diametrically opposite to that, let us say an affidavit from somebody who knew Miss Landsman and was able to say that to his positive information of long-standing acquaintanceship with her she had never engaged in those activities, and let us go one step further and say that Miss Landsman had not only appeared before the committee, but had testified fully under oath that she had never engaged in those activities, we believe the information that the committee had that she had engaged in those activities would permit [fol. 18] the committee to seek whatever information it could do so in order to check whether she was in those activities or was not, because she may well have decided to take the risks of perjury in denying it. It may well be that the person who gave the affidavit stating she was not in that activity would be willing to take the risks of perjury. But if the committee had sufficient information so that it seemed reasonable to make the inquiry, I think that no matter what was in the possession of the committee contrary to that would still allow them to proceed along the line, if it was reasonable to start with. In other words, no matter what the committee might have, no matter what might result from this shotgun subpoena, if the committee was possessed of the information leading to a likely connection between Miss Landsman as a member of the party in the New York area and Mr. Shelton—

The Court: Supposing she wasn't a member of the party in the New York area?

Mr. Hitz: Then that would test the truth of what the committee had information about.

The Court: That is right. But doesn't this Court have to determine on some sort of evidence whether she was a communist in the New York area?

Mr. Hitz: No.

The Court: You don't mean to stand there and tell the Court that I am going to find somebody guilty of contempt [fol. 19] where the witness is asked, have you ever had any conversation with a certain person, and they refuse to answer and then it is determined that that person was lily-white, never had anything to do with the Communist Party in any shape, form or fashion. Why would you say that was a contemptuous question; how could you?

Mr. Hitz: If the committee had reason to believe that she were not lily-white and was a member of the Communist Party conspiracy—

The Court: I will concede that the committee had a right to go ahead on that theory. But doesn't the Court have a right to know, before he gets through; doesn't the Court have a right to have the ultimate facts? Does the defendant have a right to defend against that?

Mr. Hitz: I think not, Your Honor. I think the answer to that is in the negative, for the very reason that hearsay testimony is permitted upon this subject. Now if the truth and the accuracy of the information that our witness will testify the committee had concerning Miss Landsman—if the truth of that were at issue, no court, and I am sure Your Honor would not permit hearsay testimony to go in on the subject, and that is precisely what Judge Holtzoff said, which was quoted by the Circuit Court here: We are not interested in the truth of it. We are interested in the reasonableness of it even as hearsay.

[fol. 20] Let me give an illustration, the same one that Judge Holtzoff gave, by the way. Suppose a search warrant based upon a prima facie showing of probable cause resulted in a successful search and contraband was obtained. If it should develop at any time that the information upon which the probable cause was based and upon which the search warrant was issued turned out to be false, the United States Commissioner or no court would quash the search warrant and return the property.

The Court: That I agree with one hundred percent. But suppose it turns out that it wasn't contraband?

Mr. Hitz: Then nobody is hurt.

The Court: As far as the search is concerned, that is true, but suppose what they found was finally determined to be not contraband?

Mr. Hitz: Well, as I say, I don't see what issue would be raised or who would complain.

The Court: The thing I am trying to get at, Mr. Hitz, on the question of probable cause, I will agree with you that you can use hearsay to prove that, but on this question of probable cause, can't the defendant dispute that in any way, shape, form or fashion?

Mr. Hitz: I think not. I think it is strictly one-sided and ex parte, certainly a search warrant is. Now if a search warrant is based upon the information of a confidential [fol. 21] informant, which is frequently the case, whether that ultimately turns out to be true or not isn't at issue.

The Court: I understand, I agree with you on that, but the question of whether the defendant is guilty of contempt might be.

Mr. Hitz: Well, we liken the two situations, Your Honor, and if the committee had a right to make the inquiry, the witness has a duty to answer, whether he be innocent or not. If he is innocent, let him make the answer.

The Court: Maybe you are right.

Mr. Hitz: So say that upon the showing we can make here, that will be nothing for the defendant with respect to pertinency beyond the face of the question. There hing that the defendant can rebut. That is the second e that could arise in the case. First, I have mentioned t egislative purpose or lack of , which the defendant will a sert, and we say that there is no room for the introduction of defense evidence contrary to the presumption of legislative purpose, and here we say on pertinency that a prima facie showing by hearsay testimony of a member of the staff of the committee is enough to support the connection or supposed connection or arguable connection between the question asked and the duties of the committee. We need not show pertinency between the question asked and the defendant, because he can be lily-white and an innocent person, and as Your Honor is well [fol. 22] aware, pertinency is tested not by the likely information to come from the particular witness, but comes

from the pertinency of the question itself. In other words, a pertinent question can be asked of an innocent witness.

The Court: Let's hear what the defendant has to say.

Mr. Hitz: I do have another point, Your Honor.

The Court: Very well.

Mr. Hitz: I know of no other factual issue upon which it could even be argued that the information in the hands of the committee is material to the defense. But over and above that, there is a second ground for the quashing of this subpoena. I have mentioned already the one that if the material is not evidentiary, the subpoena can and may be quashed upon motion. Second of all, it has always been held that a subpoena which is really a fishing expedition, to obtain information that the defendant doesn't even know exists anywhere, much less in the hands of the committee, that that subpoena will be quashed merely because it is a fishing expedition.

The Court: Let me see a copy of the subpoena that was issued, will you, please, sir?

Mr. Hitz: We say this subpoena should be quashed as a fishing expedition.

[fol. 23] The Court: You may proceed.

Mr. Hitz: And for one further reason, too, that in this and in any other case, it is likely that enforcing a subpoena of this sort, which is a fishing expedition, will likely result in revealing confidential informants of the committee. That has been uniformly held to be a reason not to enforce a subpoena.

And finally, there is the point that we cannot urge too strongly here; we do not urge it too strongly, but it is one that will point up the importance of the issue that is raised, and that is the confidential character of the information sought in the hands of the legislative branch. And I think that the Court should move very carefully, as I am sure this Court will, in considering the possibility of enforcing a subpoena against the legislative branch. If the Court should decide to enforce a subpoena of this sort and if the legislative branch should decide that the matter is of such importance, either as a matter of principle or because the particular confidential information in the hands of the committee is more important than the prosecution

of the case, an issue might arise here that would require the dismissal of this case.

I am sure that Your Honor will not approach that situation without giving full thought to the several reasons that I have mentioned here which have been upheld by the [fol. 24] courts on motions of this sort. I may say there have been numerous motions to quash subpoenas precisely like this in this jurisdiction, and every one has been granted, and I know of no jurisdiction where there has been a single decision honoring a subpoena of this sort in the face of a motion to quash. Thank you, Your Honor.

The Court: Mr. Rauh, I will hear you now.

Argument in Opposition to Motion

Mr. Rauh: May it please the Court, with all due deference to my learned and able opponent, there has never been a subpoena like this quashed in this District.

The facts which we will develop at the trial, and which I believe are not disputed, are these: A subpoena was issued to one Willard Shelton at the New York Times; that is, the subpoena was issued to one Willard Shelton, New York Times. When the investigator got to the Times, the man at the Times said, "There isn't any Willard Shelton here, but we got a few other Sheltons." And the investigator looked through the list of a few other Sheltons and he saw one in the news room. He says, "Well, I will talk to this fellow." So he talked to this fellow, and then he wrote in on the subpoena the name of the defendant.

The Court: Now let me see. Is it your contention that this defendant was never properly subpoenaed before the committee?

[fol. 25] Mr. Rauh: No, sir. Well, I shouldn't say no, sir. I am not making a technical defense on the subpoena. What our major line of defense will be, and I am not trying to get from the subpoena what Mr. Hitz thinks I am trying to get, a lot of confidential information—I am trying to prove, and maybe he will concede it, that at the time they called Mr. Shelton, the defendant, before the committee, they had no information whatever about him. In other words, I am not trying to fish for any information in those

files. I would be perfectly satisfied to take a stipulation from Mr. Hitz that there was in the files no evidence derogatory to Mr. Shelton prior to his calling and that this was really what Mr. Hitz is accusing us of—a shotgun subpoena: namely, it was erroneously issued, in the first place, to a wrong man and without any evidence that this was a man who had been in any way concerned with the communist movement or knew anything about it. It was changed over to this man and he was called before the committee, without any prima facie case or probable cause, and it is for that purpose that we ask for this material. Therefore, I suggested it might have been wiser—I didn't want to interrupt, but it might have been wiser if I had spoken first so that Mr. Hitz's remarks could have been directed at what we were trying to show, rather than at very vague arguments.

What we want to show through the subpoena, Your [fol. 26] Honor, and I think it is very material, very evidentiary—I will concede, if it isn't evidentiary, of course, we shouldn't have it enforced, but it seems to me highly evidentiary to prove that at the time this man was called before an executive session of a committee, they had no derogatory information about him and that he was called there by accident.

The Court: But Mr. Hitz says it didn't make any difference. In other words, he said, we can't go into that, whether they had any derogatory information or not, that their determination of asking the questions is sufficient. Is that the way I understood you, Mr. Hitz?

Mr. Hitz: Yes, sir.

The Court: Of course, this subpoena here, Mr. Rauh, is a Mother Hubbard subpoena.

Mr. Rauh: You can only find out a negative by subpoenaing all the things that are in the positive, and I believe the answer to this is, and Mrs. Baker could testify to this if she would make a search of her files, that there was nothing in the files as of the time he was initially called.

Now let me make one point very clear, if Your Honor please. The Government has no right to withhold from us something because it is confidential. They may have the right to drop the prosecution, but the cases are perfectly

clear, and we can call Your Honor's attention to them, that when the Government comes into court against a [fol. 27] defendant, the fact that there is something confidential that would be helpful to the defendant isn't a ground for withholding that. The Government has a choice. It can either come into court and prosecute and give us the information we need for our defense or it can drop the prosecution. The cases are clear on that, and I really understood Mr. Hitz to say that if you ruled this was material, they would then have to consider that aspect of the case. So that isn't really before you.

What is before you at the moment, and what seems to be the dispute between Mr. Hitz and myself, is whether it is material to be able to show that at the time the defendant was taken before a committee of the Senate, there was no information available to that committee in any way reflecting upon that defendant, and I would say that that is both a violation of the fourth and fifth amendments. It is an absence of probable cause. It was a restraint on the defendant in absence of probable cause and, secondly, it constitutes an arbitrary action.

The Court: Of course, counsel, since we have been talking about it specifically, if the Government in this case, specifically on Question 2: "Did you ever have any conversation with Matilda Landsman?" shows they had no information of any kind or character that Mr. Shelton had ever heard of Matilda Landsman, had no information of any kind or character that this defendant had ever been in any way connected with Matilda Landsman, you need not [fol. 28] have much trouble as far as this Court is concerned as to what would happen to that indictment, or to that count of the indictment, because I think it is necessary, Mr. Hitz, for the Government to prove more than just that naked question, I mean, I would think so, and I have so held, as you well know, myself, recently.

RULING OF THE COURT

The Court: But I don't think we need discuss this any longer. I would have to sustain the motion. I think this Mother Hubbard subpoena, as I would call it, is too much Mother Hubbard. It calls for too many things that, of

course, this Court wouldn't require, and if it is confidential, I am going to sustain the motion to quash this subpoena, and we will see what develops as far as the Government's testimony is concerned.

Mr. Rauh: If Your Honor please, simply for purposes of the record, is this ruling that proof of the absence of evidence or knowledge against the defendant at the time the subpoena was issued is not material?

The Court: I didn't say that.

Mr. Rauh: Because I know of no other way to prove they had none except to subpoena what they did have.

The Court: I didn't say that. What I said was if the only proof they had was that they asked this question and were relying upon the question itself as being contemptuous [fol. 29] as far as this defendant is concerned, and there is no proof offered by the Government that they had any information of any kind or character whatsoever in respect to this defendant and in respect to the relation with this Matilda Landsman, why, the Government will probably lose the case on Count 2. I haven't ruled yet, but that is the way I feel about it.

Mr. Rauh: This subpoena, sir, was directed at all three counts.

The Court: Yes, I understand it is.

Mr. Rauh: It was directed at proving that they had no information whatever at the time they called—

The Court: Of course, the same thing would probably be true on Count 3: "What did you tell them, your employers?" I don't know what that means without some additional proof. As to Count 1—I don't know what the record is going to show—but as to Count 1, if the record shows what they usually do in this case, I think it would be pertinent.

Mr. Rauh: But, sir, it is exactly to Count 1 that this subpoena is addressed, to show that they had never heard of this defendant at the time they subpoenaed him, and they got him by accident. This is our one chance of proving, if Your Honor please, that the subpoenaing of this man was an accident, that their files were barren at the time that they called him, and this question which Your Honor feels

[fol. 30] may be pertinent on its face was the same as if they had called the man off the street.

The Court: I have sustained the motion to quash.

Mr. Hitz: Shall we proceed, Your Honor?

The Court: You may proceed.

Mr. Hitz: It is my understanding this would be the commencement of the trial at this time—

The Court: That is right.

Mr. Hitz: —the other being a preliminary matter?

The Court: That is right.

Mr. Hitz: I have an extra copy of the indictment, if Your Honor would care to have it as a work sheet.

May I make a brief opening statement of fact, Your Honor?

The Court: Yes, sir.

OPENING STATEMENT BY THE GOVERNMENT

Mr. Hitz: As the indictment states, the witness appeared before the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws of the Judiciary Committee of the Senate, commonly known as the Internal Security Subcommittee, which was holding hearings in Washington on January 6, 1956, and that he was asked certain questions that were pertinent to the purposes of that committee, as stated in Resolution [fol. 31] 366, which I need not at this point go into because Your Honor, I am sure, recalls that from another case. We will, of course, offer it in proof so that it is in the record. But, roughly, that subcommittee had the power and the duty to inquire into subversive activities in this country, to determine the scope, the source, and so forth, of those activities.

Now, Mr. Shelton was told to appear before the committee on January 6, 1956, after he had already appeared in an executive session in New York before the same subcommittee on December 7, 1955.

When he appeared in New York, he was asked certain questions concerning his own Communist Party activities and other matters dealing with subversive activities generally in the New York area. He refused to answer all such

questions about himself and other persons. He answered only certain questions concerning his earlier background and education. When he was asked the questions that were of interest to the committee under their resolution, he not only refused to answer, but he announced certain reasons for doing so, and he timed his refusals to answer in such a way that it was apparent to the counsel for the committee and to the committee indeed, as it will, I think, appear from the record itself when we read it, that he was possessed of certain information of interest to the committee along this line.

[fol. 32] I mention that not because I think that it has to be shown that the particular witness was believed to be in the possession of that sort of information, for the reason I believe the resolution is sufficiently broad and the purpose of the resolution is sufficiently important to the nation and to the national security that any question pertinent to those purposes, to preserve the form of government that we have, to put it very briefly, and to determine what measures can and should be taken against those who seek to overthrow that form of government, is so important that any question that is pertinent to that subject could be asked of anyone at all, even the most innocent person, as it developed or as it started, and could be asked of anybody whose identity was even unknown to the committee. I may say, to use the language of Mr. Rauh, that a man off the street could be called off the street and asked, "Are you one of the persons that we have a duty to protect this country from?" and if the person was, he should either answer or make a refusal to answer based upon some legal justification.

Now, we say that only with respect to a pertinent question. We don't think that a person off the street could be called in and asked, "What are your political beliefs?" But we think that there is no reason why anyone couldn't be asked, "Are you a member of the Communist Party?" and "Tell us what you know about it."

[fol. 33] So I say that the proof that we will offer here that the committee had some reason to believe from the executive testimony that this person was possessed of information that it would be to the interest of the committee

to again try to obtain, as it did by calling him again, is proof beyond the necessities of this case: since we have had proof in the case, we are going to offer it, and we are going to, from that, contend that the committee had reason to ask these pertinent questions of this particular witness, although, we say, to repeat it, we think they could be asked of anyone.

We also contend in this case that how the witness got before either the executive session in December in New York or how he got before the committee in the session in Washington, from which the trial here stems, is of no importance, for the reason that the statute, after condemning a default by anyone who has been subpoenaed to comply with the order of the committee, after stating that it would be a default for someone who has been summoned to appear before the committee, then goes on and says, "or anyone who having appeared refuses to answer questions pertinent to the purposes of the committee shall be in contempt."

So that the second clause under which we are prosecuting this case only has to do with a person who appears, and we say no matter how he gets on the stand. Indeed, it has often happened that someone from the audience, having [fol. 34] been recognized by the committee or its staff or for some other reason it is decided to call him up to the stand, has been put on the stand and asked questions, and he has no reason to complain that he wasn't subpoenaed. So when Mr. Shelton appeared on January 6th before the committee, his duty was to answer questions that were pertinent, no matter who he was. If that be true, of course, then why he was summoned to appear in the executive session before that in New York is, likewise, immaterial, so long as the committee desired answers to questions that might result in information along the line of their resolution.

I may say that Your Honor will never probably find presented to him for decision a case of contempt where the committee did not have some reason to call the person as a matter of fact, although we say as a matter of law it is unimportant, for the very good reason that the committee doesn't have time to investigate the conspiratorial connec-

tions and subversive activities of everyone. Their time is more than consumed with respect to those about whom they do have information.

In this case, too, there was reason for the committee to have subpoenaed Mr. Shelton to appear before the executive session in New York, and we can show that, although we feel we do not have to. Since it has been mentioned, I will state now that there was very good reason to call Mr. [fol. 35] Shelton before the first of these two sessions, but even if there were not reason to call him before the second one, it would have been supplied by the first appearance that he, indeed, did make. But we can go beyond that. The committee was possessed of information that there was a man, last name Shelton, who was employed by a newspaper called the New York Times, in New York City, who had been a member of the Communist Party and was at the time of the information. It was as a result of that, as a matter of fact, that the time of the committee was taken up to obtain the testimony and the appearance of the defendant in this case. But whether or not there was sufficient reason to have called him the second time from his appearance on the first time, and even if there was not, we say that if we can prove these questions to be pertinent, that could be asked of him or anyone else.

With respect to the second and third counts, we will offer evidence beyond the face of the questions themselves to prove pertinency. I have already indicated what we will show with respect to Matilda Landsman. Now a person situated as was Matilda Landsman, with the supposed training and capabilities that the committee was informed she had and was given, with respect to such person, anyone who might know her and her activities and might have discussed the activities with her, or indeed have had any conversation with her, would be a person in whom the committee could well be interested and concerning whom the [fol. 36] question could be asked, even though it hadn't been shown there was a connection between Matilda Landsman and that particular person.

We go further than that in our proof in this case, however, because the information in the hands of the committee, as I have already indicated, was that Mr. Shelton was

a member of the Communist Party in the New York area, as was Matilda Landsman. We say, I again repeat, although we don't have to show it, that we can show from that that there was a sufficiently close connection between the two by reason of membership in this conspiratorial organization, so found by the legislature, that the committee would be derelict in not asking that witness that information concerning Miss Landsman, although it never had heard they had communicated. The committee is trying to find that out. Indeed, to carry the argument of Mr. Rauh further, he would limit the committee to asking questions only concerning which they had ten percent, fifteen percent, maybe even fifty-one percent information already at hand. We say that is untenable and it is an unreasonable restriction on the important powers of Congress. Thank you, Your Honor.

The Court: Mr. Rauh, do you want to make a statement now?

OPENING STATEMENT BY THE DEFENDANT

Mr. Rauh: I would only say, if Your Honor please, that [fol. 37] our contention is not that they have to have information on particular questions, but that they have to have some information about the man, and that I find it, if I may say so, with due deference to counsel, rather depressing to feel that it is the Government's position that a man could be hauled off the street and asked about his past. I don't believe that can be done, and we are going to try to show that is what was done here, and that that is unlawful.

The Court: Call your first witness.

Mr. Hitz: Mr. Sourwine.

Marshal, ask him to wait outside; I have something to take up first.

OFFERS IN EVIDENCE

Your Honor, I think I will offer the formal documents at this time, before the witness appears. My first offer is a copy of Senate Resolution 366, 81st Congress, which is the resolution creating the powers that have been mentioned

for either the Judiciary Committee or the subcommittee. I offer that as Government 1.

Mr. Rauh: We have no objection to the entry, although we do not put the interpretation on it that Mr. Hitz just did in his statement.

Mr. Hitz: We understand.

The Court: Has it been marked as Government Exhibit 1?

Mr. Hitz: It is now.

[fol. 38] The Court: It will be admitted.

(Government Exhibit 1 was marked and received in evidence.)

Mr. Hitz: Would you mark this Government 2?

(Government Exhibit 2 was marked for identification.)

Mr. Hitz: I now offer Government 2, which is Senate Resolution 58 of the 84th Congress, which is a resolution that provides the formality of authorizing the Judiciary Committee or a subcommittee of it to expend certain funds to carry out the purposes of Resolution 366 of an earlier Congress. It is that formal document.

Mr. Rauh: We have no objection.

The Court: It will be admitted as Government Exhibit 2.

(Government Exhibit 2 for identification was received in evidence.)

Mr. Hitz: The next is Government No. 3 for identification, which is a copy of a committee resolution, the Judiciary Committee resolution, continuing for the 84th Congress the special subcommittee that I have already named here, commonly called the Internal Security Subcommittee.

The Court: Any objection, Mr. Rauh, to Government Exhibit 3?

Mr. Rauh: I don't believe I have an objection. I have [fol. 39] never had a chance to see this before.

The Court: Take what time you need. Do you need more time to examine it?

Mr. Rauh: I would like to examine it more, sir.

The Court: Go ahead.

Mr. Rauh: We have no objection.

The Court: Exhibit 3 will be admitted.

(Government Exhibit 3 was marked and received in evidence.)

Mr. Hitz: Next is Government 4 for identification, which is a statement of the persons appointed by the Judiciary Committee to comprise the Special Committee on Internal Security, which is the one in issue in this case, the appointment being in February, 1955.

The Court: That is, assigning certain members of the committee?

Mr. Hitz: Certain members of the Judiciary Committee to this subcommittee, yes, Your Honor.

The Court: Very well, it will be admitted.

(Government Exhibit 4 was marked and received in evidence.)

Mr. Hitz: Next is Government No. 5 for identification, which is the certification by the President of the Senate, actually the Vice President of the United States, of the resolution of the Senate which cited Shelton for contempt. [fol. 40] the certification being of that fact to the United States Attorney. Attached to the certification is a copy of the Senate resolution which ordered the certification of the contempt to the United States Attorney, and attached to that resolution is a copy of the Judiciary Committee report, reporting the facts of the contempt to the full body of the Senate, but, nevertheless, it is one document that we offer, because they are all attached to each other.

Mr. Rauh: We have no objection.

The Court: It will be admitted.

(Government Exhibit 5 was marked and received in evidence.)

Mr. Hitz: Now I am ready to call my witness, if Your Honor will permit it.

Mr. Rauh: If Your Honor please, the announcement of witnesses may be required. I have a witness whom I have never seen, and if he was in the courtroom, I would be in the position of not knowing it. So possibly the clerk

would want to make the announcement again in case there is somebody here. I notice there are two strangers, and I thought one might be the witness I have asked to come later.

The Clerk: Do you have his name?

Mr. Rauh: Halleck.

The Court: Are there any witnesses in this case in the courtroom other than Mr. Sourwine?

[fol. 41] (No response.)

Thereupon JULIAN G. SOURWINE was called as a witness by and on behalf of the Government, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hitz:

Q. Mr. Sourwine, state your full name, please.

A. Julian G. Sourwine.

Q. Your occupation, sir?

A. I am a lawyer.

Q. Have you had duties with the staff of the Internal Security Subcommittee of the Senate, being a subcommittee of the Judiciary Committee?

A. I have.

Q. Over what period of time and what were the duties, sir?

A. I served as chief counsel of that subcommittee for a number of years prior to the end of January, 1956. I resigned at that time and returned to the staff of the subcommittee as associate counsel October 1, 1956.

Q. And you are presently with the committee, are you, sir?

A. I am.

[fol. 42] Q. I have a document here, Mr. Sourwine, which has been identified as Government Exhibit No. 4 in evidence, which states that the following persons were named by the Judiciary Committee to comprise the Internal Security Subcommittee, so-called, on February 7, 1955—

please have in mind the date—those persons being: Senators Eastland, Johnston, McClellan, Hennings, Daniel, Jenner, Watkins, Welker and Butler.

Was February 7, 1955 the commencement of a new session of Congress, the 84th Congress?

A. No, sir. The session had commenced before that. It was close to the beginning of the new session.

Q. Do you have knowledge of the duration of the term of a Senator on a particular committee or subcommittee, with reference to the first and second parts of the session of Congress? Do you have such knowledge? Just answer you do or do not.

A. Yes, sir, I do.

Q. When a Senator is appointed to a committee in the first session of a Congress, does that appointment last, other things being equal, through the second part of the same session?

A. Yes, sir.

Q. Was the appointment of these persons I have named here from this Document No. 4, in February 7, 1955, to [fol. 43] go through both parts of that Congress?

A. So far as I know, it was, sir.

Q. Was it the 84th Congress?

A. Yes, sir.

Q. And that lasts two years, does it?

A. Yes, sir.

Q. Both parts of a Congress?

A. Yes, sir.

Q. Mr. Sourwine, did you take part as the examiner for the committee in an executive session in New York City on December 7, 1955, at a time when the Subcommittee on Internal Security was conducting hearings there, at which time Mr. Shelton appeared?

A. Yes, sir.

Q. Does the report of the Judiciary Committee, being Report No. 1934 of the 84th Congress, contain the executive testimony of Mr. Shelton in December, 1955, in executive session?

A. Yes, sir.

Q. As Annex 1?

A. Yes, sir.

Q. And is Annex 2 the testimony of Mr. Shelton on January 6, 1956 in Washington, D. C.?

A. Yes, sir.

Mr. Hitz: Would you give that the next number?

[fol. 44] (Government Exhibit 6 was marked for identification.)

OFFER IN EVIDENCE

Mr. Hitz: Your Honor, I have asked the clerk to mark as Government Exhibit No. 6 for identification the Report No. 1934, which has just been described in my last questions of Mr. Sourwine. That is the same report which is one of the attachments to the certification to the United States Attorney from the President of the Senate, but I am offering it again in this form so that it will be more easily read and available.

The Court: I understand.

Mr. Rauh: We have no objection.

The Court: It will be admitted.

(Government Exhibit 6 for identification was received in evidence.)

By Mr. Hitz:

Q. Mr. Sourwine, prior to the appearance by Mr. Shelton before the subcommittee on December 7, 1955 in New York, did the committee, to your knowledge, its subcommittee or its staff, to your knowledge, have any information concerning the witness Robert Shelton; if so, what was it?

A. The committee had information that a man by the name of Shelton, employed on the New York Times, was in a position probably to give the committee information with respect to communist activity.

[fol. 45] Q. Did the information go to any participation by himself in those activities?

A. Yes, sir.

Q. Will you state what it was?

A. The information the committee had was that this man named Shelton was a member of the communist group in the New York Times.

Q. By communist group, did that information have any relationship to the Communist Party, Mr. Sourwine?

A. The committee did not have a direct statement that this man was a member of the Communist Party, no, sir.

Q. But a member of the communist group at that location?

A. Yes, sir.

Q. Where was that location stated to be? You mentioned the New York Times, but New York Times in what city?

A. The New York Times in New York City, sir.

Q. As a result of that information, did the committee make efforts to obtain the presence before it of the man named Shelton employed by that paper?

A. Yes, sir.

Q. What efforts were made, sir?

A. The committee caused a subpoena to be issued. Do you want the whole story here?

Q. Yes, sir.

[fol. 46] A. The subpoena was issued in an erroneous name. The subpoena was issued for one Willard Shelton. There is a Willard Shelton that has since been ascertained that he was not the man the committee wanted. The committee's employee who went to New York to serve the subpoena, along with other subpoenas, soon ascertained that there was no Willard Shelton employed on the New York Times. He was told that there was a Robert Shelton employed and that Robert Shelton was the only employee of the New York Times on the editorial side. We knew the man we wanted was on the editorial side.

Q. You had that information prior?

A. On the news side, yes, sir. He was instructed, thereupon, to call upon Robert Shelton, since he was the only Shelton on the news side, as presumably the man we want and to ask him to come down and testify before the committee.

Q. Was a subpoena given to Robert Shelton?

A. Yes, sir.

Q. And afterwards, and as a result of that, did Robert Shelton appear in the executive session of December 7, 1955 in New York City?

A. He did.

Q. Have you had occasion to read the testimony that is given in Annex 1 of the committee report citing Shelton for the date December 7, 1955?

A. I have read it, sir.

[fol. 47] Q. Is it substantially accurate, as you recall those proceedings?

A. Yes, sir.

Q. Would you be good enough to read to us what took place at that session, sir?

Perhaps I should clear one thing up first. Did the information that you had concerning an employee on the editorial side of the Times in New York City state what his first name was?

A. No, sir.

Q. Only the last name?

A. Yes, sir.

Q. All right, now would you read the executive session, please?

A. Do you want the preliminary matter, or shall I begin reading with the first statement by the Senator?

Q. State, first of all, who was present of the committee and then read the testimony.

A. (Quoting):

"Present: Senators Hennings and Jenner.

"Also present: J. G. Sourwine, chief counsel, and Benjamin Mandel, research director.

"Senator Hennings. You do solemnly swear that the testimony you are about to give at these hearings will be [fol. 48] the truth, the whole truth and nothing but the truth, so help you God?

"Mr. Shelton. I do.

"Senator Hennings. Be seated, Mr. Shelton.

"Mr. Sourwine. Will you give the reporter your full name, sir?

"Mr. Shelton. Robert Shelton.

"Mr. Sourwine. Do you have a middle name or initial?

"Mr. Shelton. No, I have not.

"Mr. Sourwine. And your address?

"Mr. Shelton. 191 Waverly Place, New York 14.

"Mr. Sourwine. And your business or profession?

"Mr. Shelton. I am a copy editor for the New York Times.

"Mr. Sourwine. You say a copy editor or the copy editor?

"Mr. Shelton. A copy editor.

"Mr. Sourwine. How many copy editors are there, sir?

"Mr. Shelton. Oh, I believe there are about 60.

[fol. 49] "Mr. Sourwine. How long have you been employed there, Mr. Shelton?

"Mr. Shelton. It will be 5 years in February.

"Mr. Sourwine. Where did you work before that, sir?

"Mr. Shelton. Prior to that I worked with Fairchild Publications.

"Mr. Sourwine. For how long?

"Mr. Shelton. About three months.

"Mr. Sourwine. And before that?

"Mr. Shelton. I was not working in the newspaper field. I was working for a mail-order house for a few months. Prior to that, unemployed; prior to that, going to college.

"Mr. Sourwine. Are you a college graduate, sir?

"Mr. Shelton. Yes.

"Mr. Sourwine. What college?

"Mr. Shelton. Northwestern University.

"Mr. Sourwine. Your degree?

"Mr. Shelton. Bachelor of science.

"Mr. Sourwine. You graduated in what year?

"Mr. Shelton. 1950.

"Mr. Sourwine. Where were you born?

[fol. 50] "Mr. Shelton. Chicago, Illinois.

"Mr. Sourwine. Did you live there in Chicago before and after the time you graduated?

"Mr. Shelton. The last two years of college I resided in Evanston, Illinois, which is a suburb of Chicago.

"Mr. Sourwine. Were you at any time active in the Newspaper Guild?

"Mr. Shelton. Is that question pertinent to the scope of this inquiry?

"Mr. Sourwine. I may say what we are primarily doing here is clearing up a question of identity and one way to do that is to make the record clear about yourself and your own associations.

"Mr. Shelton. I understand that. That is a matter of public record; that I have been a member of the Newspaper Guild.

"Mr. Sourwine. For how long, sir?

"Mr. Shelton. Well, I joined the guild when I was at Fairchild Publications; that would be some time in the winter of 1950."

Q. May I interrupt, Mr. Sourwine, please?

It was stated two questions before that you were making an effort to clear up a question of identity. Can you state [fol. 51] in any more detail now what the purpose of that question was, sir, concerning identity?

A. Well, we were not sure that we had the Shelton that we wanted.

Q. For the reasons you have already mentioned?

A. Pardon?

Q. For the reasons you have already mentioned?

A. Yes, sir.

Q. All right, will you continue now, without omission?

A. (Quoting):

"Mr. Sourwine. For how long, sir?

"Mr. Shelton. Well, I joined the guild when I was at Fairchild Publications; that would be some time in the winter of 1950.

"Mr. Sourwine. You were not then with the guild in 1947?

"Mr. Shelton. No; I was a college student then.

"Mr. Sourwine. Were you ever Washington correspondent for PM or in any way connected with PM?

"Mr. Shelton. No, sir.

"Mr. Sourwine. And you are not a member of the Communist Party and you never have been; is that right?

[fol. 52] "Mr. Shelton. I have a brief statement I would like to introduce at this point, if I may.

"Senator Hennings. Do you care to read it, Mr. Shelton?

"Mr. Shelton. Yes, I would.

"Senator Hennings. Of course, that is not responsive to the question. I think first you had better—

"Mr. Sourwine. This is an executive session.

"Senator Jenner. Let him read it.

"Mr. Shelton. I am a loyal American who believes in and firmly supports the Constitution of the United States. Because of that strong belief in the Constitution, I am forced to say that this inquiry raises serious doubts in my mind.

"I must ask this question: Is an inquiry into the beliefs and associations of a citizen forbidden by the first amendment to the Constitution? That amendment says that:

> "'Congress shall make no law * * * abridging the freedom of speech or of the press or of the right of the [fol. 53] people peaceably to assemble * * *.'

"Several weeks ago the venerable scholar, Prof. Alexander Meiklejohn, testified before the Senate Subcommittee on Constitutional Liberties. He said in part:

> "'* * * no subordinate agency of the Government has authority to ask, under compulsion to answer, what a citizen's political commitments are. The question, 'Are you a Republican?' or 'Are you a Communist?' when accompanied by the threat of harmful or degrading consequences, if an answer is refused, or if the answer is this rather than that, is an intolerable invasion of the 'reserved powers' of the governing people. And the freedom thus protected does not rest upon the fifth amendment 'right' of one who is governed to avoid self-incrimination. It expresses the constitutional authority, the legal power, of one who governs to make up his own mind without fear or favor, with the independence and freedom in which self-government consists.'

"Therefore, gentlemen, in asking me, 'Am I, or have I ever been, a member of the Communist Party,' or 'Have I any knowledge of Communist activity or conspiracy in the

newspaper field or elsewhere,' I feel that, however unknowingly or unwittingly, you are infringing on my rights under the first amendment.

"The question I feel to be even further a violation of the first amendment because of my profession as a news- [fol. 54] paperman. Freedom of the press is a broad right and a broad philosophy. It belongs not only to the publishers of newspapers and periodicals, but also to everyone in this country. It especially belongs to anyone connected with writing or editing what will appear in print. Thus, an inquiry into the beliefs and associations of a newspaperman is by direct connection an inquiry into the press and a threat to the freedom of the press as guaranteed under the first amendment.

"One of the reasons I was attracted to the New York Times as a newspaper to work for is the philosophy under which it operates. It is a credo that many papers in this country would be happy to call their own. Adolph S. Ochs, assuming the ownership of the Times, wrote in a signed editorial on August 19, 1896:

> "'It will be my earnest aim that the New York Times * * * give the news impartially, without fear or favor, regardless of any party, sect or interest involved * * *,—

and further,

> "'nor will there be a departure from the general tone and character and policies * * * unless * * * to intensify its devotion to the cause of * * * no more gov- [fol. 55] ernment than is absolutely necessary to protect society, maintain individual vested rights and assure the free exercise of a sound conscience.'

"Speaking not for the Times, but as an individual newspaperman who supports these statements by Mr. Ochs, I must say that the committee's summoning of me to inquire into my associations and beliefs substantially affects my role as a subeditor in passing upon stories for publication in a daily newspaper.

"'Fear and favor' are the key words here. I am placed in fear of having my loyalty considered suspect and being

faced with legal and economic penalties if I do not, while freely exercising my sound conscience, answer this committee's questions. I am obliged to seek the favor of this committee to guard my personal integrity and the integrity of the newspaper profession in general and the organization for which I work, in particular.

"The twin evils of fear and favor do not apply to me alone. They would apply also if this body were to summon a writer or editor of a newspaper that advocated white supremacy and expressed condemnation of the Supreme Court's ruling on desegregation. An inquiry into the be-
[fol. 56] liefs and associations of such a person would, I feel, also be an invasion of freedom of the press.

"On the basis of these considerations, I must respectfully arrive at the conclusion that this inquiry is a violation of my rights under the first amendment to the Constitution in respect to freedom of speech and of the press and peaceable assembly.

"Furthermore, the inquiry is beyond the scope of the committee.

"Senator Hennings. In that event, having read your statement into the record, Mr. Shelton, are we to assume that your objection goes to the entire inquiry or to the question which has been put to you?

"Mr. Shelton. The actual basis for the inquiry has not been stated to me, nor does it appear on the subpoena.

"Senator Hennings. I understood you to say that you considered this inquiry to be an invasion of your rights?

"Mr. Fraenkel: Certainly insofar as this particular question is concerned."

Q. Would you pardon me. Who is Mr. Fraenkel?

[fol. 57] A. Mr. Fraenkel is an attorney who had appeared at the hearing as counsel for the witness.

Q. Thank you. Will you read, without omission?

A. (Quoting):

"Senator Hennings. That is what I wanted to get at, whether it is the question.

"Mr. Fraenkel. As to whether other questions—certain questions have been asked and have been answered.

"Mr. Sourwine. Counsel has not been identified; if he is going to testify for the witness, let's have his name.

"Senator Hennings. Give your full name and office address.

"Mr. Fraenkel. Osmond K. Fraenkel, 120 Broadway, New York.

"Senator Hennings. Thank you. Counsel was interrupted in the course of making his statement.

"Mr. Fraenkel. As to whether any other questions would be answered would depend on the character of the questions.

"Senator Hennings. So the record may reflect the circumstances as they actually are, do we understand that Mr. Shelton refuses to answer the question that counsel has [fol. 58] put to him upon the grounds which he stated in the statement?

"Mr. Shelton. That is correct.

"Mr. Sourwine. That ground is the first amendment and the jurisdiction of the committee.

"Mr. Shelton. That is correct.

"Mr. Sourwine. I believe, Mr. Chairman, that the committee must refuse to accept the first amendment as a ground for refusing to answer the question and that the committee also cannot endure a direct challenge to its jurisdiction and the witness should be instructed to answer the question.

"Senator Hennings. The witness at this time is instructed and directed to answer the question.

"Mr. Shelton. I stand on my statement.

"Senator Hennings. The record will so reflect.

"Mr. Sourwine. I will state, Mr. Chairman, I am greatly surprised. I did not expect this. We came into this as I explained to the Senators and to put on the record to clear up a question of identity. The record will show that the witness was not charged with being a Communist. Counsel said you are not a Communist and you never have been; [fol. 59] isn't that right?

"Mr. Fraenkel. Obviously that involves—

"Mr. Sourwine. The question does, of course, involve the answer, but I must admit to the chairman, I am taken by surprise.

"It may be that we shall have to question this witness more at length later. I would like to ask just a couple of questions now because of the statement which has been made.

"Senator Hennings. I might suggest to Mr. Shelton and to counsel that this committee here and now is not going to determine or undertake to determine the legal question which has been raised by this objection.

"Mr. Fraenkel. Naturally.

"Senator Hennings. And the refusal to answer the question. For the record, in order that the issue may be made, the witness has been asked and directed to answer the question and has refused to do so.

"Mr. Sourwine. Do you, sir, consider the Communist Party to be just another political party just like the Republican Party, which is the connotation in which you mentioned it?

[fol. 60] "Mr. Shelton. I wish to stand on the statement which I have made.

"Senator Jenner. Mr. Chairman, I respectfully request that the witness be ordered and directed to answer that question.

"Senator Hennings. The witness is so directed.

"Mr. Shelton. I stand on the statement that I have made.

"Mr. Sourwine. You mean you refuse to answer the question?

"Mr. Shelton. That's right; for the same reason.

"Mr. Sourwine. Because of your claim of privilege under the first amendment and your challenge to the committee's jurisdiction?

"Mr. Shelton. That's right.

"Mr. Sourwine. Are you contending that you wish to assert in any way your privilege under the fifth amendment to refuse to answer questions which involve testifying against yourself?

"Mr. Shelton. No, I do not.

"Mr. Sourwine. I am not suggesting that you do so.

[fol. 61] "Senator Hennings. You are standing solely upon the first amendment?

"Mr. Shelton. Yes.

"Mr. Sourwine. Don't you know, sir, that the Communist Party is an international conspiracy, that it is not just another political party?

"Mr. Shelton. I wish once again to stand on the statement and the reasons and things that were outlined in the statement.

"Mr. Sourwine. You mean you refuse to answer that question on the same grounds?

"Senator Jenner. I respectfully request that the witness be directed to answer the question.

"Senator Hennings. The witness is so directed.

"Mr. Shelton. I stand on the statement I made.

"Mr. Sourwine. Are you aware that the Congress of the United States and the courts of the United States have concurred in finding that communism is an international conspiracy and the Communist Party is a part of that conspiracy?

"(The witness consulted with counsel.)

[fol. 62] "Mr. Shelton. In addition to standing on my statement, I believe that this question is one that would require a lawyer to answer. I am a newspaperman; I am not a lawyer.

"Mr. Sourwine. Sir, you would not have to be a lawyer to answer that question, regardless of what counsel told you; it went only to your own knowledge. Newspapermen as informed laymen are frequently aware of other things in other fields, even specialized fields. Either you are aware of those findings by the Congress or the courts or you are not.

"We are simply establishing that fact, are you aware of those findings by the United States Congress or the courts of the United States that the Communist conspiracy is a worldwide conspiracy and the Communist Party is a part of that conspiracy?

"(Witness consulted with counsel.)

"Senator Hennings. The Chair might say to the witness the witness either knows or does not know. He may make no answer if he desires or he may say he does not know or he may state that he does know, to put it another way.

"Mr. Shelton. I have so read, so heard. However, I offer [fol. 63] no opinion.

"Mr. Sourwine. The committee does not require you be a conformist. We simply wanted to know if you know. Did you, sir, personally write your statement delivered here this morning?

"Mr. Shelton. Yes.

"Mr. Sourwine. Did you have any help in the composition or the writing of the statement?

"Mr. Shelton. I was advised by counsel.

"Mr. Sourwine. Did you consult in the writing of it with any other person than counsel?

"Mr. Shelton. Is that question pertinent to the scope of the inquiry?

"Mr. Sourwine: I will ask this question, if the Chair permits. I will make it a more direct question. I was dividing it into two parts. Did you consult in connection with your statement or seek or receive advice in the writing of it from any person known to you to be a Communist?

"Mr. Fraenkel. Repeat the question. I did not catch the last one.

"Mr. Sourwine. Read the question.

[fol. 64] "(Question read.)

"Mr. Shelton. The answer is 'No.'

"Mr. Sourwine. Do you know your present counsel to be a Communist?

"Mr. Shelton. I think that is a bit of a—I don't know what the ethics of the law profession are about this, but it would seem to me that you are impugning the respectability; you are impugning the reputation of my counsel by this question.

"Mr. Sourwine. This question goes to the credibility of the witness in connection with the next question.

"Mr. Fraenkel. I would resent the question very seriously.

"Senator Hennings. You what?

"Mr. Fraenkel. I resent that question. The witness has already said—

"Senator Hennings. Have you any further grounds as

to the reason why you apparently may object to the question?

"Counsel resenting a question is scarcely an objection under our procedures.

"Mr. Fraenkel. The witness has stated he does not consider the question pertinent, nor do I. I would advise [fol. 65] him, as his lawyer, that he is not obliged to answer such a question.

"Senator Hennings. Then you are advising him not to answer on the ground that the question is lacking in relevancy or pertinency?

"Mr. Fraenkel. That is right.

"Senator Hennings. The Chair might observe, sir, that it would seem to me rather difficult for you to determine as counsel or for this witness to determine what is relevant or what is pertinent to the subject matter of the entire inquiry.

"Mr. Fraenkel. The courts will have to determine that if the matter is put to that issue, sir.

"Senator Hennings. Then I take it Mr. Shelton does not see fit to answer that question.

"(Witness consulted with counsel.)

"Mr. Sourwine. He has not refused.

"Mr. Shelton. To be perfectly frank, I have had no reason to believe that my counsel is a member of the Communist Party. I think his standing and reputation as one of the country's leading constitutional lawyers is undisputed.

[fol. 66] "Mr. Sourwine. I made no challenge to the counsel's standing or reputation, nor to his legal ability. The question simply was whether you knew him to be a member of the Communist Party. Is your answer, 'No, you do not'?

"Mr. Shelton. Nothing has led me to believe that he is.

"Senator Hennings. Then will you be good enough to be responsive to the question, Mr. Shelton? You either do know that he is or you do not know whether he is or indeed you know that he is not.

"Mr. Shelton. I do not know whether he is or is not.

"Mr. Sourwine. I have no further questions.

"Mr. Fraenkel. Has no reason to believe.

"Mr. Shelton. I have no reason to believe that he is.

"Mr. Mandel. Were you a member of the Communist Party or a Communist youth organization prior to your employment in the New York Times?

"Mr. Shelton. I stand on my statement.

"Mr. Mandel. Did you obtain employment—

[fol. 67] "Senator Jenner. Wait just a minute. Mr. Chairman, I respectfully request that the witness be ordered and directed to answer that question.

"Senator Hennings. The witness has refused to answer that question.

"Mr. Shelton. On the grounds set forth in my statement.

"Senator Hennings. On the grounds set forth; that is to say, the protection afforded the witness according to his understanding of the first amendment and also the jurisdiction of the committee.

"Mr. Shelton. Yes.

"Senator Hennings. The witness is ordered and directed to answer the question.

"Mr. Shelton. I repeat that I refuse to answer the question on the grounds set forth in my statement.

"Senator Hennings. Very well.

"Mr. Mandel. Did you obtain employment with the New York Times with the aid of any Communist connections?

"(Witness consulted with counsel.)

"Mr. Shelton. The answer is 'No'.

[fol. 68] "Mr. Mandel. Do you know Matilda Landsman?"

Q. Excuse me, Mr. Sourwine. Tell us who Matilda Landsman was, to the information of the committee.

A. Matilda Landsman was an employee of the New York Times in the mechanical department, specifically, in the typographical department. The committee had information that Matilda Landsman was a member of the Communist Party and a party to a particular operation of that party which involved an effort to take over the Typographical Union in New York City.

Q. Did the committee, to your knowledge, have any information concerning any special training achieved by Miss Landsman?

A. Yes, sir. Miss Landsman had been a secretary; had resigned from that post; had taken a course of training of some six months as a linotype operator in Connecticut and had then returned to New York and with some waiver of apprenticeship requirements obtained a journeyman's card as a linotype operator.

Q. At what location?

A. In New York City. And she had resumed employment with the New York Times, this time in the mechanical department.

Q. Did you have information as to whether she was employed at the New York Times at any time when Mr. Shelton was?

A. Yes, sir. They were both employed there at the same time.

[fol. 69] Q. Was that information in the hands of the committee?

A. Yes, sir.

Q. Now, will you continue to read, without omission, please?

A. (Quoting):

"Mr. Shelton. I stand on the—

"(Witness consulted with counsel.)

"Mr. Shelton. I refuse to answer that on the grounds stated in my statement, the question being a violation of my rights under the first amendment.

"Senator Jenner. Wait just a minute. Let's keep the record straight. Mr. Chairman, I request the witness be ordered and directed to answer that question.

"Senator Hennings. The witness is ordered and directed to answer the question.

"Mr. Shelton. I stand on my statement.

"Senator Hennings. The witness refuses to answer upon the grounds stated heretofore, that is, his protection under the first amendment and his challenge to the jurisdiction of this subcommittee.

"Mr. Mandel. Do you know Matilda Landsman as a fellow member of a Communist cell at the New York Times?

[fol. 70] "Mr. Shelton. I stand on my statement.

"Senator Jenner. I request, Mr. Chairman, that the witness be ordered and directed to answer.

"Senator Hennings. The witness is again ordered and directed to answer the question.

"Mr. Shelton. Once again I stand on my statement.

"Mr. Sourwine. I have one final question. In the preparation of the statement which you read here today, did you consult with or seek advice from or receive advice from any person other than your counsel?

"(Witness consulted with counsel.)

"Mr. Shelton. A personal friend was asked for an opinion. He in no way had anything to do with drawing up the statement.

"Mr. Sourwine. Who is that?

"Mr. Fraenkel. I think this is going pretty far, Senator. I think that the witness should not be required to answer that question.

"Mr. Shelton. I accept full responsibility for what is in that statement as being my ideas and with the quotations there that I also endorse from Professor Meiklejohn [fol. 71] and from Adolph S. Ochs.

"Mr. Sourwine. I would like to have an answer.

"Senator Hennings. The witness is ordered and directed to answer the question.

"Mr. Shelton. Would you repeat the question?

"Mr. Sourwine. Yes. Who was this person whom you consulted other than your counsel?

"(Witness consulted with counsel.)

"Mr. Shelton. I believe this question is beyond the scope of the committee. And I, therefore, refuse to answer.

"Senator Hennings. The witness having been ordered and directed to answer the question refuses to answer the question on the grounds that this question is beyond the scope of this subcommittee's inquiry. Do I state your grounds accurately, sir?

"Mr. Shelton. That's right.

"Mr. Fraenkel. May I point out, the witness having already stated—

"Senator Jenner. Listen, Mr. Chairman, counsel is here as a privilege, not as a right.

[fol. 72] "Mr. Fraenkel. I appreciate that.

"Senator Jenner. I resent the counsel making voluntary statements. Of course, the witness is permitted to seek advice of counsel which is permissible in this committee.

"Senator Hennings. The Senator has properly stated the functions and limitations of counsel. Counsel, I am sure, appreciates it.

"Mr. Fraenkel. I appreciate that. But this being executive session, I thought that counsel has greater freedom than in public session.

"Senator Hennings. We try to be reasonable with counsel and we try to give them latitude, but you can appreciate that statements and observations by counsel do not serve any useful purpose in this inquiry, burden the record, and are not in accord with the general policy and methods of operating our committee.

"Mr. Sourwine. Sir, as a technical matter, I believe that the witness' statement that he believed the last question to be beyond the competence of the committee, or whatever he did state in the nature of an objection, I am a little afraid that the record does not show that after the raising of that objection, the witness was ordered to answer the [fol. 73] question.

"Senator Hennings. In any event, the witness will again be ordered and directed to answer the question.

"Mr. Shelton. I respectfully decline to answer the question on the grounds that it is beyond the scope of this committee's inquiry.

"Senator Hennings. Very well.

"Mr. Sourwine. I have no more questions, sir."

The Court: At this stage of the proceedings, the Court is going to take a recess for lunch, and we will recess until 2:00 o'clock this afternoon.

(Whereupon, at 12:30 p. m., a luncheon recess was taken until 2:00 p. m.)

[fol. 74]

COLLOQUY BETWEEN COURT AND COUNSEL

Afternoon Session

(2:00 p.m.)

Mr. Rauh: If Your Honor please, we have subpoenaed Mr. Charles Halleck (standing). Mr. Halleck is a hostile witness, but I don't want to put him to any more inconvenience than I can help. He has just become a father again and he is taking his wife home from the hospital tomorrow. He is also a law student. He informs me that the combination of these makes tomorrow a terrible day for him.

Now I am willing to do anything to accommodate Mr. Halleck, and I wondered what Mr. Hitz thought of possibly putting him on now or arranging to do it afterwards, sir. It is simply a matter of Mr. Halleck's convenience. It is of no matter to the defense.

The Court: What is your situation for the rest of the day?

Mr. Rauh: He can be here all day today, he has informed me.

Mr. Hitz: We don't object to him being called out of turn, if it is all right with the Court.

The Court: It is.

How much longer do you think it will take your testimony, Mr. Hitz, the Government's testimony?

Mr. Hitz: I think it will take about forty-five minutes more at the most.

[fol. 75] The Court: Then we can let him have forty-five minutes more of the Government's case, if you want to call him out of turn.

Mr. Rauh: I have some considerable cross examination, but I can start that and stop in time. What time is your stopping time, if Your Honor please?

The Court: I usually run until about 5:00 o'clock.

Mr. Rauh: Oh, we ought to get him on. May he go to the witness room?

The Court: Yes.

(Mr. Halleck leaves the courtroom.)

By Mr. Hitz:

Q. Mr. Sourwine, I think you had completed reading, without any omissions, the executive testimony of Mr. Shelton in December, '55, in New York City; is that right, sir?

A. Annex 1.

Q. That is correct, from the report of the committee.

A. Yes, sir.

Q. Was Mr. Shelton subsequently informed that the committee wanted him to return and give more testimony?

A. Yes, sir.

Q. In what fashion was he advised of that?

A. His counsel was called and told that he should come.

Q. And he did appear on January 6, 1956; is that correct, [fol. 76] sir?

A. Yes, sir.

Q. In Washington, D. C.?

A. Yes, sir.

Q. Was that the next time that he appeared before the committee?

A. Yes, sir, that was it.

Q. And the only other time other than the executive session that we have just read; is that correct, sir?

A. Yes, sir.

Q. Now, was the testimony of Mr. Shelton on the second appearance published in Part 17 of a publication of the subcommittee entitled "Strategy and Tactics of World Communism," subtitle, "Community Activity in New York"?

A. The hearings which included the testimony of Mr. Shelton were published in a volume which bore that subtitle at the top, yes, sir.

Mr. Hitz: Would you mark this No. 7 for identification?

(Government Exhibit 7 was marked for identification.)

Mr. Hitz: Do you have a copy of this?
Mr. Rauh: Yes.

OFFER IN EVIDENCE

Mr. Hitz: Your Honor, I would like to offer in evidence [fol. 77] this Part 17, with particular reference to certain portions of it, but I think the entire volume is admissible in evidence here. We will read only a small portion of it. May it be received?

Mr. Rauh: No objection, Your Honor.

The Court: Government's Exhibit 7 will be admitted in evidence.

(Government Exhibit 7 marked for identification was received in evidence.)

Mr. Hitz: And I have an extra copy, if the Court would like to use it as a working copy instead of the evidence copy.

Would Your Honor pardon me, I just received a note from somebody who is waiting here. May I read the note?

The Court: You may.

Mr. Hitz: Thank you.

The Court: Does counsel need to be excused for a moment?

Mr. Hitz: No, I do not need to, thank you.

The Court: Very well.

By Mr. Hitz:

Q. Mr. Sourwine, Part 17—have you got a copy of it?

A. Yes, sir.

Q. Part 17 concerns itself with the testimony of wit- [fol. 78] nesses on January 4, 5, 6, 1956; is that correct, sir?

A. That is correct.

Q. And it bears the subhead, "Communist Activity in New York"; is that right?

A. Yes, sir.

Q. And the index indicates that Mr. Shelton appeared

on Page 1721, which would make it under the date of the 6th of January, the last of the three days; is that right?

A. Yes, sir.

Q. By the way, Matilda Landsman was called in these same hearings, was she not?

A. Yes, sir.

Q. And her testimony appears on what page—1769, isn't it?

A. Yes, sir, 1769.

Q. That, of course, would be after Mr. Shelton testified?

A. On the same day, yes, sir.

Q. On the same day, however, and also on the 6th of January. Now, of course, Mr. Shelton had already testified in the executive session, because it was in December, '55.

A. Yes, sir.

Q. Had Miss Landsman given testimony in executive session before this public testimony of hers?

A. My memory is that she had.

[fol. 79] Q. With reference to Miss Landsman, while we are on the subject, Mr. Sourwine, I believe you have testified that the committee was possessed of certain information concerning her efforts in the Typographical Union in New York City; is that right?

A. Yes, sir, I gave testimony on that subject.

Q. Did you have information that she was a member of that union?

A. Yes, sir.

Q. Active in its work?

A. Yes, sir.

Q. When she testified in executive session, was she asked about that union activity?

A. My memory is that she was.

Q. Was she asked about her alleged Communist Party activities?

A. Yes, sir.

Q. Did she give information on those two subjects or did she not?

A. My memory is that she took the Fifth Amendment and declined to answer the questions.

Q. Having in mind the amendment of 1954 to the Internal

Security Act of 1950, was that one of the statutes that your subcommittee was charged with investigating the efficacy and the administration of under Parts 1 and 2 of [fol. 80] the Resolution 366?

A. If you are referring to the Communist Control Act, the answer is yes.

Q. I am referring to it. Is that the 1954 amendment to the Internal Security Act?

A. Yes, sir.

Q. Did the 1954 amendment, the Communist Control Act of 1954, make any mention of union activities?

A. Yes, sir.

Q. Did it have any provisions with respect to the rights and privileges of unions which had been found to be communist-dominated?

A. Yes, sir.

Mr. Rauh: Objection, Your Honor. I don't understand the relationship of any statutes to this problem. We all know what the law is. I don't think we need the witness to tell us what statutes were on the book at a given time.

Mr. Hitz: I think technically that Mr. Rauh might be on sound ground, if his objection is the best evidence rule. I am trying to proceed—if it is so easy for us to find out what the law states, then there is no problem cross examining the witness if he states it improperly. I just wanted to get on in that fashion. We can, of course, introduce and read into the record the statute, if Mr. Rauh persists in the best evidence rule objection.

[fol. 81] The Court: The objection would have to be sustained on the best evidence rule.

Mr. Hitz: I will, however, cite it to the Court and to the record. The Communist Control Act of 1954 was passed in August, 1954, and is 68 Stat. 775, and is found in 50 United States Code, and commences at Section 841.

The Court: Of which the Court can take judicial notice and does take judicial notice.

Mr. Hitz: Yes, Your Honor.

I think, however, we could bring out from the witness properly that the act did concern itself in some fashion

or other with certain union activities and communist activities.

The Court: Very well.

By Mr. Hitz:

Q. And with that, Mr. Sourwine, did you on behalf of the committee question Miss Landsman when she was in executive session?

A. Yes, sir.

Q. Mr. Sourwine, would you be good enough to turn to Page 1587 of Government No. 7?

The Court: What is the page, counsel?

Mr. Hitz: I am sorry, sir, 1587, which is the first page, actually, of this Part 17.

By Mr. Hitz:

[fol. 82] Q. Could you tell us whether what is recorded here and printed is substantially accurate to your recollection of what happened?

A. It is.

Q. Would you be good enough to state whether this hearing took place in Washington on January 4, '56?

A. It did.

Q. And were Senators Eastland, Johnston, Hennings, McClellan, Jenner, Watkins and Welker present?

A. Yes, sir.

Q. Were you the interrogator?

A. I asked most of the questions, sir.

Q. Would you be good enough to read what the chairman had to say on that page and the next page? By the way, this was the commencement of these hearings, is that correct, on communist activity in New York as a subhead to "Strategy and Tactics of World Communism?"

A. No, sir, I don't think that is a fair statement. This was the commencement of three days of hearing in New York. This title was put on by an editor afterwards, when it came to the point of printing the regular book of the hearings.

Q. But this was in the nature of an opening statement in reference to the three-day hearings that are contained in this volume?

A. Yes, sir.

[fol. 83] Q. Would you read it for us?

A. (Quoting):

"The Chairman. Come to order.

"The hearings we are about to open stem from sessions of this subcommittee held on June 28 and 29, 1955, in which we heard the testimony of Mr. Winston Mansfield Burdett, a newspaperman and broadcaster.

"Having been drawn into the Communist Party in 1937 and having left that organization in the early 1940's, Mr. Burdett rendered a patriotic service by disclosing to the subcommittee the names of men and women whom he knew as members of the Communist Party.

"In conformance with its mandate from the United States Senate and from the American people, the subcommittee was in duty bound to pursue every lead which developed out of the Burdett testimony. In justice to those named it could not do otherwise than give these individuals an opportunity to affirm or deny allegations made. Some have explained fully and frankly the nature of their associations. Others have invoked the protection of the fifth amendment in refusing to answer questions in regard to their Com-

[fol. 84] munist affiliations.

"The subcommittee could not be unmindful of the fact that among the persons involved in this investigation have been many who were or are members of the press, and that the international Communist conspiracy has as one of its primary aims the influencing of public opinion, thus carrying on its psychological warfare against the United States and its institutions from inside by methods of penetration. These facts did not in any way decrease the importance of carrying forward the investigation with diligence, care and devotion to duty. The present hearings open up a subsequent chapter to the Burdett testimony of June 28 and 29, 1955.

"Who is your first witness?

"Mr. Sourwine. James Glaser.
"The Chairman. Mr. Glaser."

Where do you want me to begin reading on the next page?
Q. Continue through to the end of the next page.
A. (Quoting):

"Senator Hennings. Mr. Chairman.
"The Chairman. Yes, sir. The Senator from Missouri.
[fol. 85] "Senator Hennings. I am very sorry that I was detained for a few minutes and did not hear all of the chairman's statement with respect to the hearings about to get underway. I take it that the chairman was advised, as other members of the committee have been, that, at the request of the committee, I went to New York and presided for two days over the executive hearings.
"The Chairman. Yes.
"Senator Hennings. On the same subject matter. I do believe it is very important at the outset for us to make it abundantly clear, if that is the purpose of counsel, and if it is the purpose of this committee, that this is not in any sense an attack upon the free press of the United States.
"The Chairman. Why, certainly, that is true.
"Senator Hennings. And I think, too, that it should be clear that the best evidence of any subversion or infiltration into any news-dispensing agency or opinion-forming journal is certainly the product itself.
"The Chairman. That is correct.
[fol. 86] "Senator Hennings. Of course, the committee is interested in the extent and nature of so-called Communist infiltration, if such exists, into any news-dispensing agency.
"The Chairman. Correct.
"Senator Hennings. But I would like to have the position of the committee, if it be the position of the majority of this committee, since the committee has not met to determine whether one policy or another is to be pursued in the course of these hearings—that it be generally known and understood that this is not an attack upon any one newspaper, upon any group of newspapers as such, but an effort on the part of this committee to show such par-

ticipation and such attempt as may be disclosed on the part of the Communist Party in the United States or elsewhere, indeed, to influence or to subvert the American press.

"And I do think that at some later time, perhaps, it might be appropriate for executives of some of the newspapers under inquiry, whose employees are under inquiry, to be called and to testify and for them to show, if they [fol. 87] can show, that the end product, the newspaper itself, has not been influenced by these efforts.

"The Chairman. The Chair thinks that is a very fine and very accurate statement, one with which the Chair certainly agrees, in its entirety.

"We are not singling out any newspaper and not investigating any newspaper or any group of newspapers. We are simply investigating communism wherever we find it, and I think that when this series of hearings is over that no one can say that any newspaper or any employees of any one newspaper has been singled out.

"Senator Hennings. Thank you, Mr. Chairman.

"Senator Watkins. I would like to say I agree with Senator Hennings' statement, Mr. Chairman."

Q. Thank you.

A. That doesn't quite complete the page.

Q. That is all I want.

Now, would you be good enough to turn to the opening session of January 6, which will be found, I think, on Page 1717.

[fol. 88] A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now, Mr. Shelton's testimony appears on Page 1721; is that correct, Mr. Sourwine?

A. It begins on 1721.

Q. And he was the first witness on that day, a Friday?

A. Yes, sir.

Q. Prior to his testimony, the chairman made some remarks and others had something to say for the record; is that true?

A. Yes, sir.

Q. Would you be good enough to tell us where this session took place?

A. In the Caucus Room of the Senate Office Building in Washington, D. C.

Q. And the date is January 6, 1956, is it?

A. Yes, sir.

Q. And what Senators were present?

A. Senators Eastland, Hennings, Watkins, Jenner and Welker.

Q. And how many is that?

A. Five.

Q. How many were on the subcommittee?

[fol. 89] A. Nine.

Q. Will you read, please, what the chairman had to say there, beginning, "The committee will come to order"?

A. (Quoting):

"The Chairman. The committee will come to order.

"I have a telegram that I am going to read into the record. This telegram is addressed to the chairman."

Do you want me to read that?

Q. Let me glance at it first.

Yes, I think you had better read it.

A. (Quoting):

"The Long Island Daily Press is in accord with your committee in its efforts to expose Communist infiltration wherever found, and certainly welcomes any revelations bearing on the local scene.

"Far from being upset because of the revelation that a Communist-directed clique operated in the 1930's among employees of the Press, we are grateful for the authoritative corroboration of the stand we took at the time, both in the columns of our paper and in appearances before public bodies.

"We took our fight to the people during the period of the 'popular front' when the Communists and the fellow travelers were riding high, and we did not shrink from

firing all those who were lending themselves to the [fol. 90] Communist cause.

"Unfortunately there have been distortions of the news emanating from your committee, at our expense. These distortions have in no way been the fault of your committee, but have falsely represented that you are investigating the Press. As the record shows, the Press fought the Communist danger to a standstill in our newspaper and in our community at a time when it was hardly fashionable to do so. If any Communist or fellow traveler in our midst was overlooked, we certainly would be greatful to have him uncovered.

"We do not believe that your committee is 'after' our newspaper. May we ask you, therefore, to cooperate in counteracting a distortion by stating your own knowledge as to the role the Press has played in dealing with Communist infiltration.

(Signed) Edward Gottlieb,
Managing Editor, Long Island Press, Jamaica, N. Y.'

"To which I would make this statement. This will be my reply. I also sent a telegram incorporating what I state here.

"The committee is investigating all of the testimony and information given it by all witnesses, and that includes testimony of Clayton Knowles, to the effect that he was a member of a Communist unit while employed by the Long Island Press during 1937 and 1939."

Q. Let me interrupt. Is he any relation to Mary Knowles? [fol. 91] A. To the best of my knowledge, he is not.

Q. All right, will you read, without omission?

A. (Quoting):

"The committee is not investigating the Long Island Press or any other newspaper. We are aware of the fact that the Long Island Press was alert to the danger of the Communist infiltration from a very early date and was aggressive and effective in combating this danger in its own organization.

"What we are interested in, if we can learn it, is the story of the past and present activities of the persons named by Mr. Knowles as members of the Communist cell to which he belonged. None of these persons, so far as we can ascertain, has been employed by the Long Island Press for many years.

"Senator Hennings. In connection, Mr. Chairman, with the statement the chairman has just read, I was unable to be at the hearing yesterday afternoon because of the meeting of the Democratic policy committee, a great part of the afternoon.

"On Monday I expressed some misgivings and doubts [fol. 92] about the calling of certain witnesses who had been, for a short time or, indeed, even for some considerable time, members of the Communist Party, reaching back into a period of 15 or 20 years ago. I am sure that we have all had some concern about, for example, the calling of Mr. Knowles the other day. I did not know that Mr. Knowles was going to be a witness until shortly before he appeared to testify and knew nothing of the nature of his testimony. He didn't appear before any executive session where I happened to be present. When did he appear, Mr. Sourwine?

"The Chairman. He appeared last fall at an executive session.

"Mr. Sourwine. On October 6.

"The Chairman. At an executive session at which I presided.

"Senator Hennings. I came on the committee last January, so that was before I was a member of the subcommittee, was it not?

"You mean this past October? Yes. That was during some other hearings—hearings of our Constitutional Rights Committee.

[fol. 93] "The thing that I think perhaps this committee might want to give some attention to—and counsel may be able to enlighten us, since we have no list of prospective witnesses, nor has any offer of proof as to what their testimony is likely to be been given to this subcommittee—is whether in calling some witnesses—and I do not know

whether or not there are any witnesses who may be in what seemed to be Mr. Knowles' category or not—we can be sure that we do not do an injustice and cause undue embarrassment and humiliation to a man who has completely rehabilitated himself, if he has no new or additional information to give this committee.

"I think that no one will quarrel with nor take issue with the fact that this committee has the right to inquire into all efforts or, indeed, all consummations of efforts of the Communist Party to infiltrate newspapers or other media of communication. But I do believe that in certain cases, if such are to be heard, and if there are witnesses to be heard today or at any other time, in the interests of justice, because we have a duty to protect witnesses as [fol. 94] well as to protect the purposes of this inquiry, that the subcommittee go into executive session so that we may determine whether or not the testimony of certain witnesses will be of substantial value to this committee and to the enlightenment of the general public.

"Mr. Knowles did not appear in New York, and I learned for the first time when he appeared on Monday that he was to be a witness.

"Now, I realize that we have a problem of not calling some witnesses and perhaps calling others in the same category, but I would like to say—and I am sure that the other members of this subcommittee are equally mindful to the same degree—that simply to call a witness for the purpose of getting cumulative testimony, and particularly where his activities have been remote in time, and even more especially where they have been of very short duration and where he has rehabilitated himself, as Mr. Knowles did, by going to the FBI, by going to his employer and making a full and complete disclosure—I just wonder what useful purpose can be served in some instances in calling such witnesses.

"What I am saying, I say by way of first suggesting [fol. 95] that in such cases I do hope that counsel will consult with the committee in executive session if counsel has any doubt as to these points, because the law does recognize, even in the case of one having been convicted

of a felony, that if that is remote in time—and the courts vary as to the number of years which may be said to be remote in point of time—but that the defendant or other witness may not be interrogated as to previous convictions if they are so remote and if the witness has thereafter led a blameless and upright life. And I do think in the interest of justice and in the interests of preserving the integrity and the high standing of this committee, we should be particularly cautious and aware of the possibility of unnecessarily calling one before us who may have nothing to add to the general subject matter of our inquiry and who may be seriously damaged in his own personal and professional life.

"I feel that that statement should be made at this time, and in making it, I do not reflect upon the judgment of anybody, either the witnesses we are to hear hereafter or [fol. 96] those that we have heard before.

"Today, for example, we have no list of witnesses who are to appear. I assume that most of them are witnesses, Mr. Sourwine, who appeared in the executive hearing.

"Mr. Sourwine. Yes, sir.

"Senator Hennings. All of them? All of them, are they?

"Mr. Sourwine. That is right.

"Senator Hennings. But I would like to suggest to the chairman that occasionally we do have an executive session of the committee so that counsel may make an offer of proof, as we do in court, to determine some of these close cases.

"The Chairman. Now, let the chairman state right there that the chairman was not at the executive sessions in New York City. The Senator from Missouri conducted those sessions. And after the conclusion, I tried to reach him for a number of days and was informed by his office that he could not be reached.

"So I discussed the testimony and set these hearings, and I think I took the right position and the only position that I could take.

"Now, Mr. Knowles, I think, made a very fine witness. [fol. 97] He has given the committee information that I

think is invaluable. Some of it leads to people who are now in a State government.

"Senator Hennings. By the same token, of course, I was in the State of Missouri after the hearings, and I do not reflect upon the chairman in any sense when I make that statement. But I also tried to reach the chairman the week preceding Christmas week, and it just so happened that we are at times, all of us, difficult to reach.

"The Chairman. I am not blaming the Senator from Missouri. I was in my home in bed the week before Christmas.

"Senator Hennings. Yes. I understood that the Senator had not been well.

"Now, I have three other conflicting committee meetings this morning. I shall be here, I would like to announce, Mr. Chairman, as much and as often as I can be here today. The Antitrust Subcommittee is meeting in executive session at this time, the Juvenile Delinquency Subcommittee, and this committee.

"I just have a note that the Antimonopoly Committee is [fol. 98] calling, and they want to approve the budget of that committee. So if I may be excused a few moments, I will return when I can.

"The Chairman. Yes, sir.

"Senator Hennings. All I wanted to say, in summing up, Mr. Chairman, is that, I believe, we should continue to proceed with all caution and all consideration.

"The Chairman. I certainly agree with that. I don't think that the Senator from Missouri will say that it has ever been the chairman's position to try to humiliate or hurt anyone. We are attempting to conduct these hearings and elicit all the facts, and I certainly think that I would have been derelict in my duty had Mr. Knowles not been called, and I am confident that future hearings will vindicate the information he has given us, the leads he has given us.

"Call your witness."

Q. Let me interrupt you there, please, sir.

I wonder if you would now glance at Page 12, which is

Annex 2 of the report of the committee citing Mr. Shelton, being Report No. 1934, and Government No. 6.

[fol. 99] Will you tell us whether the printed report of Mr. Shelton's testimony as contained in the report on Page 12 is that which is now to commence on Page 1720 of Part 17, being Government 7?

A. Yes, sir, except that I don't think it is technically testimony until he is sworn in, and he isn't sworn in yet. It is his statement before the committee, the same statement made by Mr. Shelton, the same questions asked him and the same answers appear on Page 12 of the report and on Page 1720 of Document 7.

Q. In other words, in the report at Page 12, the asterisks that occur there indicate the omission of these preliminaries that you have just read from the full report of the hearing; is that correct, sir?

A. Yes, sir.

Q. Now, would you be good enough to tell us whether or not you know why Mr. Shelton was asked to return to give further testimony on January 6, after having given some testimony in executive session on December 7, '55?

A. Yes, sir.

Q. Tell us, please.

Mr. Rauh: Is this something that the witness knows of his own knowledge or is it something told to him by the chairman of the committee?

By Mr. Hitz:

[fol. 100] Q. Do you know the answer to that question, of your own knowledge, sir?

A. Yes, sir.

The Court: You may proceed.

Mr. Hitz: Is that the only objection, Mr. Rauh?

Mr. Rauh: Yes, that is all.

By Mr. Hitz:

Q. Will you tell us?

A. I might explain for the satisfaction of counsel, I know

it of my own knowledge because Mr. Shelton was called on my recommendation, and I know why I recommended it.

Mr. Shelton, in his appearance in executive session, had declined to answer a number of questions, had withheld from the committee the answers to these questions. They were questions in the area in which the committee wanted information. I was satisfied that he had such information, and I hoped that if he came on in executive session, that perhaps he might change his mind and give it to us.

Q. Had your committee, to your knowledge, had that same experience with any other witness in the past, that is, that they refused to give information initially and on a subsequent appearance did give information sought?

A. Yes. The witnesses frequently change their position. We have had a witness appear several different times and take a different position each time.

[fol. 101] Q. For example, did that occur before your committee with respect to or by Dr. Bella Dodd?

A. Dr. Bella Dodd's initial refusal was not before our subcommittee, but Dr. Bella Dodd initially refused under oath to give information respecting her communist affiliations and her knowledge of communist activity and was quite resentful of the committee's attempt to even get information. Dr. Dodd subsequently has appeared before our committee and elsewhere and has given such information quite fully. We never feel, Mr. Hitz, that the fact that a witness has at one time refused to answer a question is an absolute sign that the witness will refuse to answer on some subsequent occasion. It is the witness' privilege to change his mind if he wants to.

Q. Now, at the time that Mr. Shelton was being questioned on January 6th, had Miss Landsman already appeared in executive session before the subcommittee?

A. It is my memory she had, yes, sir.

Q. Can you tell us whether, in fact, she did?

A. Mr. Hitz, when I say it is my memory that she had, I mean to the best of my personal recollection, she did.

Q. Can we get at it this way: Doesn't Miss Landsman's testimony occur on the same day in public session as Mr. Shelton's?

A. Yes, sir.

Q. Can you recall whether or not Miss Landsman, as [fol. 102] a matter of fact, did appear or did not in executive session prior to the day that she testified in public?

A. Yes, sir, she did.

Q. So the answer to my question is what?

A. Yes, sir, she did.

Q. Now, with respect to the legislative function of your subcommittee and of the parent committee, the Judiciary Committee, when there were amendments being considered in the year 1954 to the Internal Security Act of 1950, which amendments resulted in the passage in August of 1954 of the Communist Control Act of that year, did the Judiciary Committee, the parent committee of your subcommittee, have any proposal with respect to a statute that had to do with infiltration of unions? Do you understand my question?

A. I think so.

Q. Would you like me to reframe the question?

A. It would be helpful, sir.

Q. In the year in which that amendment to the Internal Security Act of 1950, bearing the name the Communist Control Act of '54, ultimately was passed, did the Judiciary Committee, to your knowledge, have any proposal to offer, which it did offer, having to do with infiltration of unions? Now is that question clear, sir?

A. Yes, sir.

Mr. Rauh: Objection on the ground of relevance. The question is at a time so many months before when the de- [fol. 103] fendant testified. I do not see any possible relevance of what they did before that. We admit the statute was passed; in fact, Your Honor has taken judicial notice that the statute was passed. I do not see any relevance to this defendant of something that occurred six months before.

Mr. Hitz: Your Honor, the Government, of course, is aware that the law is that it is unnecessary for the Government to be able to show and to show that a particular committee, in order to be held to have had a legislative purpose, actually ever made any legislative recommendations. They may never have done so. They may never have felt that the law was such that it required an amend-

ment or that the field required Congress to enter that field. However, if the Government can show that, nevertheless, action had been taken of one sort or another by that committee, it does, in fact, show an actual legislative purpose, and therefore we feel that we can show that.

Now the connection along that line that would be argued by me is that if in 1954, when certain labor union amendments were added to the 1950 act, this committee or its parent committee was engaged in putting forward proposals in that same direction, it would indicate that the matter of infiltration of unions had actually been considered and was before that committee; in other words, that it did, in fact, exercise a legislative function with respect to that [fol. 104] field of activity. We can show that, and if we can show it, we feel, although we need not go to this extent, we would be proving legislative purpose in fact.

The Court: The resolution itself would be sufficient to cover any inquiry along the line you are making here, even within the legislative jurisdiction of the committee, but if the witness can testify that something in addition happened after the 1950 act, or the amendment to the act, I think it is competent. I will permit the witness to answer. The objection will be overruled.

The Witness: The bill which ultimately became the Communist Control Act of 1954 was sponsored by two of the members of the Internal Security Subcommittee, Senator McCarran and Senator Butler, and was originally reported out of the Internal Security Subcommittee to the full Committee on the Judiciary of the Senate.

By Mr. Hitz:

Q. Would you be good enough to continue to read, without omission, from the hearing at which Mr. Shelton appeared. that is, where you just left off?

A. (Quoting):

"The Chairman. Call your witness.

"Mr. Sourwine. Mr. Shelton.

"The Chairman. Will you hold your hand up.

"Mr. Shelton. Before I am sworn in, Mr. Chairman, I

[fol. 105] would like to raise an objection that might have some bearing as to whether or not I am sworn in.

"I wish to challenge the jurisdiction of the committee to call me here in Washington, based on the fact that my testimony in executive session makes it clear that the committee will obtain no information from me—

"Senator Jenner. I cannot hear you. Will you speak a little closer to the mike.

"Mr. Shelton. If I may repeat this:

"I challenge the jurisdiction of the committee to call me here in Washington, based on the fact that my testimony in executive session makes it clear that the committee will obtain no information from me that could possibly assist it in any legislative purpose.

"To question me further in Washington might subject me to prosecution in violation of my right to be tried in the community where I work and live.

"Furthermore, I fail to see why I am involved in this hearing, which the chairman said on Wednesday stems from the Burdett testimony. There was no reference to me [fol. 106] in the Burdett testimony nor in the testimony of Clayton Knowles.

"Mr. Sourwine. Mr. Chairman, what the witness has said boils down to an assertion that because he has refused to answer certain questions before the committee in executive session, the committee has lost jurisdiction to ask him the same or other questions in public session.

"I think that is absurd, and I respectfully ask that the objection be overruled, and that the witness be sworn.

"The Chairman. Yes, the objection is overruled.

"Will you hold your hand up.

"Do you solemnly swear the testimony you are about to give the Senate Internal Security Subcommittee is the truth, the whole truth, and nothing but the truth, so help you God?

"Mr. Shelton. I do, sir.

"Testimony of Robert Shelton, New York, N. Y.

"Mr. Sourwine. Would you give the reporter your full name, please?

"Mr. Shelton. Robert Shelton.

"Mr. Sourwine. You have a middle initial, Mr. Shel-
[fol. 107] ton?

"Mr. Shelton. No, I don't.

"Mr. Sourwine. And your address, sir?

"Mr. Shelton. 191 Waverly Place, New York 14, N. Y.

"Mr. Sourwine. You are here represented by counsel?

"Mr. Shelton. Yes.

"Mr. Sourwine. Would you introduce your counsel, please.

"Mr. Shelton. Osmond K. Fraenkel, F-r-a-e-n-k-e-l.

"Mr. Sourwine. And the New York City address?

"Mr. Shelton. 120 Broadway.

"Mr. Sourwine. Mr. Shelton, what is your business or profession.

"Mr. Shelton. I am a copy editor.

"Mr. Sourwine. Where are you employ[illegible]?

"Mr. Shelton. The New York Times.

"Mr. Sourwine. How long have you been employed there?

"Mr. Shelton. It will be five years in February.

"Mr. Sourwine. Have you been employed as a copy editor
[fol. 108] all of that time?

"Mr. Shelton. No. For about the past year and a half, I have been copy editor.

"Mr. Sourwine. What did you do before that?

"Mr. Shelton. I was a news clerk.

"Mr. Sourwine. What does that mean? What is a news clerk, sir?

"Mr. Shelton. Well, a news clerk is one—an assistant or an apprentice. I worked on the city desk.

"Mr. Sourwine. Did you ever write obituaries?

"Mr. Shelton. If this is not an investigation into the press, Mr. Sourwine, I don't see the pertinency of the question to the scope of the investigation.

"Mr. Sourwine. We are attempting to determine what your employment is, sir. Did you ever write obituaries?

"Mr. Shelton. I am a copy editor, sir, in the news department of the New York Times.

"Mr. Sourwine. Did you ever write obituaries?

"Mr. Shelton. Write obituaries?

[fol. 109] "Mr. Sourwine. Yes, sir.

"Mr. Shelton. That is not my job, sir.

"Mr. Sourwine. Did you ever write obituaries?

"Mr. Shelton. I may at one time have rewritten an obituary, but my job is that of a copy editor.

"Mr. Sourwine. Did you write the obituary for Richard H. Krebs, Jan Valtin?

"Mr. Shelton. I do not write obituaries. The answer to that is 'No,' sir.

"Mr. Sourwine. Right.

"Mr. Shelton. I am raising the question since this is not a question of the investigation of the press, why you are asking why I have written—

"Mr. Sourwine. Are you, sir, a member of the Communist Party U. S. A.?"

Mr. Hitz: Excuse me, Your Honor, that is Count No. 1.

The Witness: (Quoting):

"Mr. Shelton. In reply to that, sir, I would like to make a brief statement that answers—that deals with the question.

"No one who knows me would doubt my loyalty to the [fol. 110] Government of the United States; because I am a loyal American, I must, as a matter of principle, challenge questions into my political beliefs and associations as a violation of my rights under the first amendment to the Constitution.

"Mr. Sourwine. Do you, sir, consider membership in the Communist Party a matter of political belief?

"Mr. Shelton. If I may be allowed, sir, to continue the statement. I haven't raised my objections.

"Mr. Sourwine. Would you answer that question and then you may.

"Senator Jenner. Let the record show consultation.

"(Consultation between witness and his counsel.)

"Mr. Shelton. I object to the question on the very same grounds.

"Mr. Sourwine. You mean you are declining to answer that question?

"Mr. Shelton. That is correct. I decline to answer on the grounds of the first amendment and challenge to the jurisdiction of the committee.

[fol. 111] "The Chairman. Now, I overrule that objection.

"Mr. Shelton. And I would like to continue with my statement because I have not gone into my reasons for it.

"Senator Jenner. Mr. Chairman, I move that you order and direct the witness to answer that question.

"The Chairman. Yes, the first amendment does not give you legal right to refuse to answer questions. Now, I order and direct you to answer the question.

"Mr. Shelton. I am answering the question, sir, in the statement, if I may continue to read it. I am not on trial here, sir. But I think that because of the nature of this hearing, my integrity and possibly my career are at stake. If I may be allowed to continue to state my—

"The Chairman. All right, I am going to permit you to do it.

"Mr. Shelton. Thank you, sir.

"That amendment says:

> "Congress shall make no law • • • abridging the freedom of speech, or of the press; or the right of the [fol. 112] people peaceably to assemble • • • .'

"Several weeks ago Professor Alexander Meiklejohn testified before the Senate Subcommittee on Constitutional Liberties. He said, in part:

> "'Suppression is always foolish. Freedom is always wise. That is the • • • experimental faith by which we Americans have undertaken to live.'

"He also said:

> "'• • • • no subordinate agency of the Government has authority to ask, under the compulsion to answer, what a citizen's political commitments are. The question, 'Are you a Republican?' or 'Are you a Communist?', when accompanied by the threat of harmful or degrading consequences, if an answer is refused, or if the

answer is this rather than that, is an intolerable invasion of the 'reserved powers' of the governing people.'

"I hold with Professor Meiklejohn on both points. As a matter of principle, I decline to answer the question because it invades my rights under the first amendment. I would decline similarly if asked whether I was or had ever been a Democrat, Republican, Socialist, Jew, Catholic, or Protestant, vegetarian, prohibitionist, or sun worshipper.

"The question also threatens freedom of the press as [fol. 113] guaranteed by the first amendment. I believe no other governmental body in the free world would call a newspaperman and demand to know his political beliefs and associations. However unknowingly or unwittingly, gentlemen, in the quest for internal security, you are threatening long-standing and hard-won American liberties. The Supreme Court has held that—

"'* * * the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose. Nor does it extend to an area in which Congress is forbidden to legislate * * *.'

"A body is the sum of its organs, a machine the sum of its parts. An attack on the smallest component of a body or machine is an attack on the whole. An invasion of my individual rights is an invasion of the rights of the paper that employs me and an invasion of the rights of the newspaper profession as a whole. This subcommittee is nudging the end of my copy pencil, it is peeking over my shoulder as I work. This subcommittee is engendering the fear that soon it will be looking into newsrooms all over the coun- [fol. 114] try.

"If, as a result of my being called here, I am put under mental pressure to change one word or one sentence in material that I edit, an abridgment of freedom of the press will have taken place. Demanding to know what is going on in the mind of a newspaperman without inhibiting a free press is impossible. Your question acts as a form of 'prior restraint' on publishing, telling newspaper executives who should or who should not be on their staffs.

"A journalist's credo I wholeheartedly support is 'to give the news impartially, without fear or favor, regardless of any party, sect, or interest involved. * * * But by being called before you to answer about my political beliefs and associations, I am placed in fear of having my loyalty considered suspect if I do not, while freely exercising my sound conscience, answer this committee's questions. I am obliged to seek your favor to guard my personal integrity, and that of the paper for which I work.

"I am involved in these hearings as a victim of accident. [fol. 115] The subpoena first served to me was originally made out in the name of a person who does not work on my paper. A committee aide, when told that there was no such person on the Times, insisted on knowing if there was anyone with a similar name employed there. There were a few, but the only one that interested your man was the sole similar name in the news department—mine. At the executive hearings the committee counsel tried without success to link me with a certain New York newspaper. He was unable to establish any connection because I never worked for the paper under discussion. Yet I have been called back here today. It appears to be just another step in a campaign to discredit the paper for which I work.

"I am not saying that I, as a newspaperman, am immune from investigation. If I have committed a crime or am alleged to have committed a crime, let a grand jury indict me and let me stand trial for the charge. I fear no such indictment because I have committed no crime. As Chief Justice Warren has ruled:

> [fol. 116] "'* * * * the power to investigate must not be confused with any of the powers of law enforcement. * * * Still further limitations on the power to investigate are found in the specific individual guaranties of the Bill of Rights. * * *'

"Let me, in complete sincerity, cooperate with you by saying this: One of the greatest contributions that can be made toward the internal security of the United States would be to promote—

"The Chairman. Wait just a minute. We are not interested in your idea of what would promote the internal se-

curity of the United States. The way to prevent your loyalty from being questioned is to freely and fully answer the questions that are asked you, sir. I overrule the objection and order you to answer the question.

"Mr. Shelton. I respectfully decline to—there is in the final paragraph of this sentence an additional objection.

"The Chairman. You have listed the first amendment.

"Mr. Shelton. There is still—

"The Chairman. That is overruled.

"Mr. Shelton. There is an additional objection here, [fol. 117] sir, if I may—I have two more paragraphs and I will be through with my statement.

"The Chairman. I wanted you to answer the questions. I overrule the objection.

"Mr. Shelton. Furthermore, I challenge the jurisdiction of this subcommittee.

"The Chairman. Wait just a minute. Answer the question.

"Mr. Shelton. I refuse to answer on the grounds of the first amendment and a challenge to the jurisdiction of the committee.

"The Chairman. Those are the only grounds you have?

"Mr. Shelton. And the grounds set forth here in my statement, sir.

"The Chairman. Set forth in your statement? Now your last two paragraphs that you mentioned are a challenge to the jurisdiction of the committee, is that right?

"Mr. Shelton. Well, I believe that the challenge to the jurisdiction is implicit throughout my statement. It quotes from the Supreme Court ruling, and the whole substance of it.

"The Chairman. You have two paragraphs you desire [fol. 118] to read?

"Mr. Shelton. Beg pardon?

"The Chairman. You say you have two paragraphs more you desire to read?

"Mr. Shelton. Yes, sir.

"The Chairman. Read them.

"Mr. Shelton. Let me, in complete sincerity, cooperate with you by saying this: One of the greatest contributions that can be made toward the internal security of the

United States would be to promote the maintenance of a press that is free and unfettered and unafraid; a press and newspapermen that will criticize what they please and support what they please. It is a rightful role of the press to be a watchdog over government. It is not a rightful role of government to be a watchdog over the press. Let the reader at his breakfast table be the judge of whether a paper suits him or not, and by extension, whether the men who produce that paper suit him.

"On the basis of these considerations, I must respectfully arrive at the conclusion that this question is a viola- [fol. 119] tion of my rights guaranteed by the first amendment in respect to freedom of speech and of the press and peaceable assembly. Furthermore, I challenge the jurisdiction of this subcommittee to ask the question.

"The Chairman. Yes, sir. I overrule the objection. The question sought information as to whether you are a member of the conspiracy to destroy the Government of the United States. It is a proper subject for inquiry, and I order you to answer the question.

"Mr. Shelton. I respectfully will decline to answer the question, sir, on the grounds set forth in my statement.

"The Chairman. On penalty of contempt of the United States Senate, I order you and direct you to answer the question.

"Repeat the question.

"Mr. Sourwine. Are you, sir, a member of the Communist Party, U. S. A.?

"Mr. Shelton. I respectfully decline to answer the question on the basis of the grounds set forth in my statement.

"Mr. Sourwine. Do you by those grounds, sir, intend to make any claim of privilege under the fifth amendment [fol. 120] to the Constitution?

"Mr. Shelton. I do not, sir.

"Mr. Sourwine. Have you ever been a member of the Communist Party in the past?

"Mr. Shelton. I respectfully decline to answer the question, sir, on the basis of the grounds set forth in my statement.

"Mr. Sourwine. So that those grounds may be clear, I will ask again the question which I asked, the answer to

which the chairman permitted you to decline. This question: Do you believe that membership in the Communist Party is merely a matter of political belief?

"(Consultation between witness and his counsel.)

"The Chairman. Let the record show that he conferred with his counsel.

"Mr. Shelton. I respectfully decline to answer that question, sir, on the basis of the grounds set forth in my statement.

"Mr. Sourwine. You have in your statement, sir, likened the Communist Party to the Democratic and Republican Parties. Do you think the Communist Party and the Demo-
[fol. 121] cratic Party and Republican Party are all in the same category?

"Mr. Shelton. I respectfully decline to answer that question, sir, on the grounds set forth in my statement.

"Mr. Sourwine. In your statement, sir, you likened the Communist Party to Catholics and Jews. Do you think Catholics, Jews and Communists are all in the same category?

"Mr. Shelton. (No response.)

"The Chairman. Answer the question.

"Mr. Shelton. I believe that I have made this clear in my statement. I wish to stand on my statement.

"Senator Jenner. Order and direct him to answer the question.

"The Chairman. I order and direct you to answer the question, sir.

"Mr. Shelton. I respectfully decline to answer the question on the basis of the grounds set forth in my statement.

"Mr. Sourwine. In your statement, sir, you likened the Communist Party to sun worshippers. Do you think sun worshippers and Communists are in the same category?

[fol. 122] "Mr. Shelton. I respectfully decline to answer the question on the grounds set forth in my statement.

"Mr. Sourwine. Mr. Shelton, did you write that statement yourself without assistance?

"Mr. Shelton. Yes, sir, I did. I conferred with my counsel on it, but I wrote every word in the statement with the exception of the quotes from Professor Meiklejohn,

the quotes from the late Adolph S. Ochs, the quotes from the Supreme Court and a paraphrase of the late editor of the New York Times, Charles Ransom Miller.

"Mr. Sourwine. Do you, Mr. Shelton, know any persons who are known to you to be members of the Communist Party?

"Mr. Shelton. I respectfully decline to answer the question, sir, on the basis of the grounds set forth in my statement.

"Mr. Sourwine. Did you, Mr. Shelton, ever attend Communist meetings?

"Mr. Shelton. I respectfully decline to answer that question, sir, on the basis of the grounds set forth in my statement.

"Mr. Sourwine. Mr. Shelton, do you know Matilda [fol. 123] Landsman?

"Mr. Shelton. I respectfully decline to answer the question, sir, on the basis of the grounds set forth in my statement.

"Mr. Sourwine. Do you, Mr. Shelton, have any knowledge respecting a Communist attempt to take over control of Typographical Union No. 6?

"Mr. Shelton. If I may confer with my counsel—

"Mr. Sourwine. Yes.

"(The witness consults with his counsel.)

"Mr. Shelton. No, sir.

"Mr. Sourwine. Did you ever discuss with Matilda Landsman the question of any Communist activity in that union?

"(The witness consults with his counsel.)

"Mr. Shelton. No, sir.

"Mr. Sourwine. Now, for the purpose of testing the credibility of that answer, sir, I will ask you, did you ever have any conversation with Matilda Landsman?"

Mr. Hitz: That is Count No. 2, Your Honor.

[fol. 124] The Witness: (Quoting):

"Mr. Shelton. I respectfully decline to answer the question, sir, based on the grounds set forth in my statement.

"The Chairman. You are ordered and directed under penalty of contempt of the United States Senate to answer that question.

"Mr. Shelton. I am really amazed, sir, that you mention the word 'contempt'. If you should attach any criminality—

"The Chairman. Answer the question, sir.

"Mr. Shelton (continuing). To a difference of opinion—

"The Chairman. Answer the question. You are going to be cited for contempt unless you do.

"Mr. Shelton. I respectfully decline to answer the question, sir, on the basis of the grounds set forth in my statement.

"Mr. Sourwine. Mr. Shelton, did you ever secure employment through Communist channels or with the assistance of persons known to you to be Communists?

"(The witness consults with his counsel.)

[fol. 125] "Mr. Shelton. The answer to that, sir, is 'No'.

"Mr. Sourwine. Did you, Mr. Shelton, ever assist any person known to you to be a Communist to secure employment?

"Mr. Shelton. The answer to that is 'No,' sir.

"Mr. Sourwine. Did you, Mr. Shelton, ever discuss with your employers the question of any Communist activity in which you engaged in the past?

"Mr. Shelton. I really must challenge the pertinency of that question to the scope of the investigations.

"The Chairman. I order and direct you to answer the question.

"Mr. Shelton. So there will be no doubt, sir, the answer to that question is 'Yes'.

"Mr. Sourwine. What did you tell them?"

Mr. Hitz: Excuse me. That is Count No. 3.

The Witness: (Quoting):

"Mr. Shelton. I respectfully decline to answer that question, sir, on the basis of the grounds set forth in the statement.

"The Chairman. Now, you are ordered and directed to [fol. 126] to answer the question.

"Mr. Shelton. I respectfully decline to answer the question, sir, on the basis of the grounds set forth in my statement.

"Mr. Sourwine. Was what you told your employer in that conversation about your past Communist activity, if any, the truth, the whole truth and nothing but the truth?

"Mr. Shelton. That, sir, sounds to me like a question of, when did I stop beating my wife. I am single, sir.

"The Chairman. Answer the question.

"Mr. Shelton. Whatever I have told my employers is the truth, sir.

"Mr. Sourwine. Why are you afraid to tell it here? You are under oath now. You were not then.

"Mr. Shelton. It is not a question of here, sir.

"Mr. Sourwine. Why won't you tell us here what you told your employer?

"Mr. Shelton. It is my understanding, sir, that the first amendment is the door to America's freedom of conscience. It is just as strong and secure a door as that on the house [fol. 127] of the chairman in Doddsville, Mississippi. It can be opened at will any time from within; it cannot be forced open with the wedges of a subpoena, with threats of contempt citation, or in any other form.

"Mr. Sourwine. Assuming that all that is true, sir, which is questionable in your instance, why are you refusing to open that door before this committee?

"Mr. Shelton. I believe that I have fully set forth my reasons in the statement that I have just read to the subcommittee.

"Mr. Sourwine. No, sir; in answer to that question, what you have said amounts to a statement that you are refusing to tell us because you have a right to refuse to tell us. That is non sequitur. That is no reason. I am asking you, why are you availing yourself of the right you assert here to refuse to answer that question?

"Mr. Shelton. May I consult with my counsel, sir?

"Mr. Sourwine. Surely.

"(The witness consults with his counsel.)

[fol. 128] "Mr. Shelton. This happens to be a matter of principle, and I think it is a very important principle that

is involved here. I have explained the principle and how I feel about the principle in my statement. I am standing on the principle and I am standing on the statement.

"The Chairman. I order and direct you to answer the question, sir.

"Mr. Shelton. I refuse to answer the question, sir, on the basis of the grounds set forth in my statement.

"Mr. Sourwine. I have no more questions, Mr. Chairman.

"Senator Welker. No questions.

"Senator Jenner. I have no questions.

"The Chairman. You may stand aside. You are released from the subpoena.

"Who is the next witness?"

Mr. Hitz: Excuse me just a moment. I think that is all, Mr. Sourwine, to read.

No further questions, Your Honor.

The Court: You may cross examine.

[fol. 129] Cross examination.

By Mr. Rauh:

Q. Mr. Sourwine, what is your present occupation? I may have gotten some of this before. I don't recall exactly what you testified to.

A. I am associate counsel of the Internal Security Subcommittee of the United States Senate.

Q. How long have you held that position?

A. Since October 1st of this year.

The Court: You mean last year, Mr. Sourwine.

The Witness: Yes, sir. I am still dating my checks 1956.

By Mr. Rauh:

Q. Am I correct, that your position at the time the defendant was interrogated was chief counsel to the Internal Security Subcommittee?

A. That is correct.

Q. And how long did you hold that position after Mr. Shelton was interrogated?

A. Until the end of January, 1956.

Q. And why did you resign?

A. I resigned for personal reasons.

Q. How long had you held that position before the defendant was interrogated?

A. I am not sure about the length of time I had the [fol. 130] title. I think I took the title in the fall of 1954. I was counsel of the Judiciary Committee of the United States Senate and, as such, had a measure of supervision over the Internal Security Subcommittee, the affairs of which were more directly controlled by an associate counsel of that committee, and there was no chief counsel. After Senator McCarran died, which was September 20, 1954, I was appointed chief counsel of the subcommittee and devoted my full time to subcommittee affairs thereafter.

Q. How long had you been, prior to '54, counsel to the Judiciary Committee?

A. I have been with the Judiciary Committee since 1944, in one capacity or another. I think I first got the title of chief counsel in 1948, but I am not sure without checking.

Q. And was Senator McCarran responsible for your appointment in '44?

A. Yes, sir, there is no doubt about it. He became chairman of the Judiciary Committee in '44. I had been counsel of the Committee on the District of Columbia, of which he had been chairman prior thereto.

Q. And you went up to these different jobs, higher and higher, with Senator McCarran?

A. I moved to the Judiciary Committee when he did. I did not at that time become counsel. There was no counsel. [fol. 131] There was a clerk, and I served as counsel for various subcommittees of the Judiciary during the period of a year or a year and a half.

Q. And then he appointed you to this higher position—

A. The committee did.

Q. —of which he was chairman?

A. That is correct.

Q. Now, did you draft S. 366?

A. Yes, sir, I did.

Q. And then subsequent to the adoption of that resolution by the Senate, in your role as counsel to the Judiciary Committee, you supervised the work on S. 366; is that fair?

A. I had general supervision over it, sir. I did not have direct responsibility for all the work of the subcommittee, but I was, I think, kept fully advised. I was consulted with and I was in a position where if I had ordered something stopped in the subcommittee, it would have been stopped, until a Senator said otherwise.

Q. Now, Mr. Sourwine, would you please state as accurately as you can remember all the information the subcommittee had about the defendant on the date the subpoena was issued to Willard Shelton? Is my question clear?

A. Your question is clear. I think it has an inherent defect, but perhaps I can get at that in my answer agreeable to you, sir. The committee had at the time the subpoena [fol. 132] was issued information that a man named Shelton, who was employed in the news department or city side of the New York Times, was a member of a communist group on the Times, was active in the affairs of that group, and would be or should be in a position to give the committee information about the activities of that group.

Q. Now, that is all there was?

A. That is correct.

Q. You didn't have any more information about it than you have now given us?

A. That is correct.

Q. When was this information given to the committee?

A. I am unable to give a precise date, sir.

Q. Was it two months before he was subpoenaed, three months, one month?

A. I think the information came to the committee within the period between thirty days and ninety days before he was subpoenaed. I would be unable to place it much closer than that.

Q. Did it come in orally or in writing?

A. The information came to the committee in writing.

Q. By letter or memorandum or was this document signed?

A. It came by letter, sir.

Q. Have you looked at that letter since you knew you [fol. 133] were going to testify here?

A. No, sir, I have not.

Q. Was this solicited or unsolicited?

A. It was an unsolicited letter.

Q. Did you make any efforts to talk to the writer of the letter?

A. I did not.

Q. You didn't check at all on someone who gave you information that this man might have been, as you put it, a member of a communist group?

A. Well, we attempted to call the gentleman as a witness, sir, and question him about it.

Q. Oh, you did call him as a witness. Did you subpoena him?

A. No, no. We attempted to call this gentleman who was named as a possible witness.

Q. If I wrote you a letter and said that Mr. Hitz was a communist, would you call him or interrogate me?

A. I think I would interrogate you, Mr. Rauh.

Q. Why didn't you interrogate the author of this letter, instead of calling Mr. Shelton?

A. Because his identity was not known to me, sir.

Q. You mean this was an anonymous letter?

A. Yes, sir. It was signed with a pseudonym.

Q. That couldn't be a very confidential document, could [fol. 134] it?

A. Yes, sir, I think it could be highly confidential.

Q. Is that letter presently in the files of the Senate Internal Security Committee?

A. I am unable to say for sure, but I doubt it.

Q. Why do you doubt it?

A. I think it is locked in the safe of the present chief counsel, Mr. Robert Morris.

Q. Isn't that in the files of the Internal Security Committee?

A. I think it is in the archives of the committee. It is in the possession of the committee. I was attempting to distinguish as between the files, sir.

Mr. Rauh: If Your Honor please, we would like to have this letter produced. It is an anonymous letter. There is no possibility of giving away any secrets of the Government. Indeed, my subpoena would have called for it. I don't want you to get me wrong, sir. I am not rearguing the subpoena. I am saying that here is an extremely important part of

our case. There is no possible identification of an informer, because this letter is anonymous. We would like to examine it to see whether it in any way conflicts with the testimony given here, and if you would like, I will withhold that until I make certain other questions which will relate to the importance of this. I may have made this request too soon, [fol. 135] Your Honor.

By Mr. Rauh:

Q. You don't remember the date on this letter?

A. No, I am sorry, I don't. It was one of a number of letters which was received from this same individual.

Q. Oh, you received a number of letters?

A. That is right.

Q. Were some of the other defendants—I mean, some of the other witnesses called as a result of anonymous letters?

A. Yes, sir, of letters from this same individual. I might say that the word "anonymous" I can't accept, because the identity of this individual was known to the then associate counsel of the subcommittee.

Q. I am sorry, I must have misunderstood. I thought you said you couldn't interrogate this man because you didn't know his identity.

A. I didn't, and I don't today.

Q. But the associate counsel knew it; he could have interrogated him, couldn't he?

A. Yes, sir.

Q. Why didn't he?

A. I don't know whether he did or not.

Q. I am not clear on your testimony, Mr. Sourwine. I had understood you to indicate that the committee was unaware of the identity of the man who wrote the anony- [fol. 136] mous letter about Mr. Shelton. Am I wrong?

A. You are incorrect. I am only answering your questions. I am not attempting to indicate anything. I will answer your questions as directly and as fully as I know how.

Q. What did the committee or any member of the committee know about the identity of the anonymous author of the letter about Mr. Shelton?

A. So far as I know, no member of the committee knew the actual identity of the person who gave us that information.

Q. And what was it that the associate counsel knew that you just told us about?

A. He knew the identity of the individual who had furnished this information, who had written us several letters providing us with information and leads.

Q. Would you please elaborate on the difference between knowing the identity of a person and knowing who it was? I am sorry, I just don't get it.

A. Well, the distinction is not at that point, Mr. Rauh. The distinction you should get is between a member of the committee and committee counsel.

Q. All right, I will put the question again. What did any member of the staff of the committee know about the identity of the man who wrote the letter about the defendant?

A. Beyond the fact that Mr. Morris knew the identity [fol. 137] of the writer of the letter, I do not know what else he knew about him.

Q. Did you know at that time that Mr. Morris knew the identity of the man who wrote the letter?

A. Yes, sir.

Q. Now, back to where I started: Since you knew that the committee knew the identity of the letter, why didn't you interrogate the man who wrote that letter, instead of issuing a subpoena without checking on that?

A. Because we already had received enough information from him which checked out to indicate that his leads were good, and because Mr. Morris knew who he was and said that he was a reliable person who was attempting to assist the committee.

Q. Was this man ever called?

A. What man, sir?

Q. The man who wrote the letter.

A. I don't think so, but since I don't know who he was, I am not even in a position to say he was never before the committee.

Q. Do you happen to remember when it was that Mr. Morris resigned to become a judge?

A. I am sorry, at the moment I do not.

Q. Well, I don't know either. That is why I asked the question. What was Mr. Morris' position at the time?

[fol. 138] A. At what time, sir?

Q. At the time that this letter was received.

A. At the time that this particular letter was received, I believe Mr. Morris was a judge of the City Court of New York.

Q. What did you do, then: you took this letter up to him on the bench and said, "Is this a reliable letter?" Is that what happened?

A. No, sir, that is not what did happen.

Q. Will you tell me what did happen?

A. I didn't do anything with regard to Mr. Morris, sir. We had received other letters from this same individual. I knew by the appearance of the letter, the way it was typed and the pseudonym which was signed to it, that it came from this same individual who had given us leads before which proved out and concerning whom Judge Morris had stated that he knew him and that he was a reliable person.

Q. Did you know it was the same person from the handwriting or the pseudonym?

A. I told you the basis for my judgment, sir, from the typing of the letter and the pseudonym. I am not a handwriting expert.

Q. But from both the typing of the letter and the pseudonym, you knew it was the same person?

A. I think there was another clue. The tone of the [fol. 139] letter was quite familiar. It was written the same as the other letters. I was convinced in my own mind that it was from the same individual.

Q. Why did you issue a subpoena, then, to Willard Shelton?

A. Aside from the fact that I don't issue subpoenas, they are issued by the chairman, I am unable to answer that question. There was an error there, a culpability which I have tried very hard to place, and I am unable to place it. I have surmised about it. If you want my surmises, I will tell you.

Q. I will be happy to have your surmises.

A. Somebody in the typing section at some point, having the name Shelton and not having the first name, asked somebody else, "What is this fellow Shelton's first name?"

Somebody else said, "What, what Shelton?"

He said, "The newspaperman Shelton."

And somebody who knew that there was a newspaperman named Willard Shelton said, "Willard."

Now that is wholly a guess. The name Willard was in error. There is a Willard Shelton, and Willard Shelton is not the person we intended to subpoena.

Q. Did the letter have a first name?

A. No, sir.

Q. Did it ever occur to you to ask Judge Morris to [fol. 140] find out what the first name was?

A. Yes, sir.

Q. But you didn't do that?

A. I don't recall that I did that, sir, no.

Q. Do you ordinarily start writing up subpoenas with only a last name?

A. No, sir.

Q. Was this an exceptional case, then?

A. Well, I would say this is an extremely exceptional case, yes, sir.

Q. Now, you said you don't issue the subpoenas.

A. That is right.

Q. Who does?

A. The chairman in each instance.

Q. Does he give them to you in blank and you type the names in?

A. No, sir, he does not. A list of proposed witnesses in this instance, and this is the course followed in most instances, went up to the chairman's office. The chairman approved that list. The subpoenas were then prepared by the stenographer and were then sent up to the chairman for his signature. I don't know of an instance where the chairman has signed a subpoena in blank.

Q. Are you familiar, Mr. Sourwine, with the piece entitled, "Strategy for Inquiry and Analysis of the Key Role [fol. 141] Sourwine has taken at Hearings on Communists," written by James Reston of the New York Times, and

appearing Friday, January 6th? I show it to you to refresh your recollection about it.

A. Yes, sir, I have seen that news story. I think they call it a "profile."

Q. I would like to read two paragraphs of that story and ask you if you want to change your testimony:

"When more than fifty subpoenas were issued to people in the press, radio and other fields of communication on behalf of the committee last November, Mr. Sourwine was the only person who seemed to know anything about them. They were issued under the name of Senator Eastland, but when this reporter called the Senator about them, he said he did not know they had been issued, did not know the hearings had been called, and said he would have to call Mr. Sourwine to find out the facts."

Would you care to change your testimony?

A. Not in the slightest, sir.

Mr. Hitz: Would you give the date of the newspaper [fol. 142] article?

Mr. Rauh: Friday, January 6th. I think I did.

Mr. Hitz: Of what year?

Mr. Rauh: Of '56.

By Mr. Rauh:

Q. Would you care to explain this? Is Mr. Reston in error?

A. I don't think it requires any explanation, Mr. Rauh, and I don't think that a newspaper print account of what a reporter says, when it is unsworn testimony, will refute my testimony. I know what I am talking about, and I am giving you the testimony from what I know.

Q. Do you think that Mr. Reston incorrectly quoted Senator Eastland?

A. I have no knowledge as to whether Mr. Reston ever talked with Senator Eastland.

Q. But Mr. Reston reports very cautiously here that Senator Eastland said he knew nothing about these subpoenas. Are you or Senator Eastland or Mr. Reston wrong here?

A. Mr. Rauh, I am only testifying to matters within my knowledge in response to your questions. If you want to draw conclusions, you will have to draw them. I might say that I don't think Mr. Reston was at that time particularly friendly towards Senator Eastland.

Q. Are you suggesting that he would have said he talked [fol. 143] to him if he had not?

A. No, sir, I am not suggesting anything of the sort. I believe Mr. Reston to be a responsible and reputable newspaperman.

Q. And yet if he correctly quotes Mr. Eastland, you just committed perjury; isn't that correct?

A. Mr. Rauh, I have committed no perjury.

Q. In other words, you say that he misquotes Senator Eastland, I take it?

A. You said so, sir.

Q. Well, I am trying to get some conformity between your testimony and this statement by a man you refer—

The Court: I think the witness has answered your question.

Mr. Rauh: Mark this as our Exhibit 1 for identification.

(Defendant's Exhibit 1 was marked for identification.)

By Mr. Rauh:

Q. I show you Defendant's Exhibit No. 1 and ask you what it is?

A. This appears to be a subpoena issued to Willard Shelton, New York Times, New York City, New York.

Q. And is that the subpoena which the Senate Internal Security Subcommittee issued to Mr. Shelton?

[fol. 144] A. It certainly appears to be, sir, that is all I can say. There is no return on the back of it.

Q. Is there anything else on the top of that, right after the words "Willard Shelton, New York?"

A. Yes, sir. Someone has written in in ink, "or Robert Shelton."

Q. And who is that someone, if you know?

A. I do not know.

Q. You have never seen this document before?

A. I don't believe so, sir. I think the subpoenas in this case went directly from the stenographic office downstairs to the Senator's office upstairs and then were served. I don't believe they came back over to my desk.

Q. Who went to New York to serve this subpoena?

A. Mr. Charles Halleck, Jr.

Q. Did Mr. Halleck call you at any time from New York after he had found out there was no Willard Shelton on the Times?

A. He did.

Q. Did he ask you for instructions as to what to do?

A. Yes. "Chuck" said—I beg your pardon, Mr. Halleck—we call him "Chuck"—said that he had been told there was no Willard Shelton on the Times, that there were several Sheltons up there and only one of them on the news side. And I told him we would give him instructions, and we [fol. 145] made arrangements to talk later on in the day, and I checked with the chairman. My recollection is that I had some difficulty reaching him by telephone, and the chairman said, in effect, "Do you think that the Shelton up there is the man we want?"

And I said, in effect, "He must be. He is the only one on the news side, and the Shelton we want is on the news side."

And he said, "Well go ahead and tell him to come."

And when I talked with "Chuck" later on, I told him to tell that Shelton that he was the man we want.

Q. And you authorized him to write in the words, "or Robert Shelton?"

A. There was no discussion about the writing in of the words. Mr. Rauh, this may be helpful to you, sir. The summons from the committee is only evidenced by that subpoena, and there are many other methods of summonsing we could use. We attach less importance to a subpoena as such on the committee on the Hill than would be the case if it were a court subpoena for appearance, where the whole authority would be in the subpoena, and if there is a defect in the subpoena, there would be something wrong with the summons. In our case, the authority of the Congress is exercised when the witness is apprised and believes that the committee wants him to appear at a certain time.

[fol. 146] Q. Did you know that the subpoena had been made out to Willard Shelton?

A. Yes, sir, I knew it when Mr. Halleck called me and told me.

Q. Did you know it before that?

A. I am not sure. I probably did, I, like everyone else—apparently, as near as I have been able to ascertain, after the name Willard got into this list, it rolled with everybody. Everybody who knew about the affair and knew there was a Willard Shelton—assumed well, he is working for the Times; now that must be the man.

Q. As I understand it, it is your testimony that you sent a list of names down to the stenographic office, they typed up the subpoenas, and then they went to the chairman to be signed, and then they went to be served; is that correct?

A. No, you left out one step. The list was first approved by the chairman.

Q. And was the word "Shelton" blank in that list or was "Willard" on it?

A. No, I am sure the word "Shelton" was not blank in that list.

Q. The word "Willard" was on it?

A. It must have been, sir.

Q. So you took that list up for approval to the chair-[fol. 147] man?

A. Yes, sir.

Q. So you believed it was Willard at that time, didn't you?

A. Yes, sir.

Q. When did you last see Mr. Halleck?

A. I saw Mr. Halleck here in court at the opening of this session.

Q. And prior to then?

A. I saw him during the noon hour.

Q. And prior to then?

A. It has been several months.

Q. When did you last talk to him on the telephone?

A. I think Thursday or Friday of last week, I am not sure which.

Q. Did he tell you that we had contacted him and asked him to testify for us about the service of this subpoena?

A. That is right.

Q. Would you relate that conversation, please?

A. Yes, sir. Mr. Halleck called me and said he had been asked by you to come down to your office, that you wanted to take a deposition. I told him I was unable to understand that, since he was available to testify in court. He said he had told you that he was afraid that there were aspects of what he had done that were confidential to the [fol. 148] committee and that he had told you in effect that he would have to think it over, he didn't want to talk with you at that time.

And I told him I thought he had taken exactly the right course, and he asked me what I would advise him to do, and I advised him to pursue the course he had followed and to tell you that he would testify if you subpoenaed him but that he wasn't going to come down to your office for any conference at your disposal.

Q. You told him not to come down and discuss it?

A. I have told him exactly what I have already testified to.

Q. You told him not to come down and discuss this with us; is that correct?

A. I have told him exactly what I have already testified to. I did not use the words, "do not go down."

Q. Was that the purport of it?

A. The purport of it is exactly as I have outlined it, Mr. Rauh.

Q. You are unwilling to say whether I had correctly stated the purport of your testimony; is that correct?

The Court: I think the Court understands the witness' answer. If there is anything in addition that the witness recalls, why, he may state it. I thought he gave you a full answer, counsel.

By Mr. Rauh:

[fol. 149] Q. Was there any reference to the testimony that Mr. Halleck would give here?

A. No, sir.

Q. Was there any reference to the event about which Mr. Halleck would testify, namely, the service on Mr. Shelton?

A. Yes, sir, I think there was. I think Mr. Halleck told me what it was you wanted to ask him about.

Q. And did you discuss that?

A. No, sir.

Q. The sole matter you discussed, am I correct, was whether he should come to my office to go over this testimony; is that correct?

A. Yes, sir. Wait a minute now. I think Mr. Halleck did ask me whether when he called he had talked with me or Mandel the first time, and my recollection is that I told him that I thought he had talked with both Mandel and myself the first time he called.

Q. Now that one addition you gave us, that one sentence, is that the only thing there was in addition to the question of whether he should come to my office and discuss it or is there still more, Mr. Sourwine? After all, this conversation was only last Thursday, not years ago.

A. That is correct, and the conversation was not very lengthy, and I have given you the substance of it, Mr. Rauh.

[fol. 150] Q. Then it is your testimony the only two things were the question of coming to my office and did he talk to you or Mandel on the telephone when he called back; is that correct?

A. Mr. Rauh, I am unwilling to have you summarize my testimony for me and accept your summary of it.

Q. Well, I will accept your summary, then. I would like to have it perfectly clear on the record.

A. Well, I have tried to make it perfectly clear on the record.

Q. Will you now repeat it, please?

A. Yes. Mr. Halleck called and said that he had been reached by a Mr. Sillard or Silard on the telephone, that Mr. Sillard or Silard wanted him to discuss the circumstances of his service of this subpoena and had wanted him —I understood him to mean on the telephone—and also had wanted him to come down to your office and give a deposition, and I said I couldn't understand what he meant by deposition, because he was available here to testify. And

he said that he had told you that he thought some of the circumstances, at least of his service, were confidential to the committee, and he wasn't sure what he could give you, and that he had told you he thought he had better think it over, and he asked me what I would advise. And I said that I thought he had done it correctly and that I would advise that he tell you that he would testify if you sub- [fol. 151] poenaed him but that he wasn't going to come down to your office and give any information.

Now I think it was at that point, after we had more or less settled, so to speak, the question, that he asked whether he had talked with me or Mandel when he had called the first time. I told him that I remembered that he had talked with Mandel and myself both. I don't remember that he asked me anything else or that I said anything else to him.

Q. And there was no further discussion of this at noon today?

A. At noon today, I was having lunch with Mr. Hitz. "Chuck" came in and I spotted him, and I said, "Hello, 'Chuck'." We were sitting fairly close to the aisle where people go through. And I said, "Are you going to testify?"

And he said, "Yes."

And I said, "Well, sit down."

He said, "Wait until I get a cup of coffee."

He went and got a cup of coffee and he came back. We then did discuss the fact that he had been called to testify.

I asked him if he had been subpoenaed.

He said no, he had not been.

I said I hadn't expected to see him here unless he was subpoenaed.

He said well, he was going to be subpoenaed, that you had said you were going to subpoena him and had asked him [fol. 152] as a matter of convenience to come ahead and that you would give him the subpoena after he got here, and he said he was just about to cooperate to do that.

If you are trying to reach the question if there was at that time any discussion of what I had testified to or as to what he should testify to, there was not.

Q. Now, Mr. Sourwine, you testified this morning and read us your examination of Mr. Shelton in executive session.

A. Yes, sir.

Q. Why did you ask him, if you had this letter you have referred to, "Were you ever Washington correspondent for PM or in any way connected with PM?"

A. I did that in line with establishing his identity and with gathering additional information for the committee. Now let me explain that. I will tell you what I mean.

We had in the committee under the name of Shelton three or four or five leads which did not have a first name. We had here a man who was Robert Shelton, who was a newspaperman. It was of some importance to the committee, while he was on the stand, to ascertain whether he was the same person as any of these other individuals. It is a procedure which we follow wherever it is possible, where time will permit: we have a witness who may be the same as a person not adequately identified in our files. We ask a question or questions for the purpose of establishing that, because even if we learn that he is not, we have ac- [fol. 153] complished something in getting a little further with our investigation. Does that answer your question?

Q. Are you finished?

A. Well, I am if you are satisfied.

Q. Did I understand you to say you had three or four or five leads by the name of Shelton that did not have a first name to it?

A. That is right.

Q. Could you tell us what these other leads were? The only one you have mentioned so far is this anonymous letter. What other things did you have in your file?

A. You were talking about different times there. The anonymous letter was all that we had about this individual, about the man we wanted who was on the New York Times, at the time that the subpoena was issued. Now, between that time and the time that Mr. Shelton appeared, we made a thorough check of all the sources that were available to us to see what there might be on a Robert Shelton or what there might be on a Shelton who might be the Robert Shelton that we were talking. And we accumulated those things from all the sources available to the committee and then attempted in the hearing to see if this was the same individual.

Q. You attempted this between the issuance of the subpoena and December 7th?

[fol. 154] A. That is right.

Q. Then why, Mr. Sourwine, did you say, when he pleaded the first amendment, "I am taken by surprise?"

A. Well, I was. I was very much taken by surprise. I had not expected him to take any such action. As a matter of fact, at that time, right at that point, he had already by the answers to the questions indicated that he was not the same as the individuals that we had these other leads on. His answers taken at their face value had shown that he was not the same person as was referred to in these other items that I have referred to as leads. His demeanor was very forthright. He was obviously a highly intelligent person. He showed great, but well controlled, annoyance at having been called, and I was at that point ready and willing to believe, and almost did believe, that we had made a mistake. I had in the back of my mind the consciousness that there had been an error in this initial subpoena. I had, I suppose, a guilt complex about it, and I was just about convinced that we had the wrong man altogether at that point.

Q. Well, what about this anonymous letter you had that said he was a member of a communist group?

A. This anonymous letter, sir, identified a Shelton as such a member. We were attempting to reach that Shelton. At one time I thought we had arrived at that, because we had narrowed it down to the fact that there was only one [fol. 155] Shelton on the news side, on the editorial side, on the New York Times. Then the witness came in, and from his appearance, his demeanor and the way he handled himself, he sold me that he wasn't the man we were looking for at all, and when he showed that he was by going off with this typical statement, I was a very flabbergasted individual.

Mr. Rauh: May I have Government's Exhibit 6, if you please?

The Court: The Court will take a recess for about ten minutes.

(Whereupon, a short recess was taken.)

The Court: You may proceed, counsel.

Mr. Rauh: At the recess, I was asking for Government's Exhibit 6, please.

By Mr. Rauh:

Q. Just before the recess, Mr. Sourwine, I believe you said—you may correct me if this is not right—that it was the defendant's demeanor and handling of himself at the executive hearing which caused you to believe there had been a mistake; is that correct?

A. In part, that is correct, yes, sir.

Q. What is the other part?

A. His answers to the questions, which, taken at their face value, indicated he was not the individual that was covered in any of these leads we had. In other words, his [fol. 156] answers taken at face value had narrowed the thing down, until all we had was the information from the confidential informant, and there had been a mixup initially, and this man presented a very fine appearance, and with a combination of those factors, I had arrived, or almost arrived, at the conclusion that we had a man who knew nothing about communism and was not going to be able to give us any information.

Q. I hand you Government's Exhibit 6, Annex 1, of which is the testimony of Mr. Shelton in executive session, and ask you to point to those places where the defendant showed you that he was handling himself well, he was not a communist, and so forth.

A. I might say offhand that you are attempting initially to require of me an objective proof of a subjective statement, which was the gist of my own conclusions and how things struck me. However, I can help you by pointing out that Mr. Shelton had testified to having lived in Chicago, up until the time he had been in Evanston, and he had been in Evanston. That ruled out a couple of the leads who had been elsewhere at the time. His joining of the guild ruled out at least one more, and his statements of his employment, if they were inclusive, and his testimony was that they were inclusive, ruled out another one.

At that time, he had by his answers ruled out the leads we had to other Sheltons who had had communist connec-

[fol. 157] tions. We had then only the lead that we had started with, and perhaps I was unjustified in having arrived at the conclusion, but I had arrived or virtually had arrived at the conclusion that this was not the man, that we would have to start over, that somebody "bobbled" again.

Q. What in that testimony led you to believe that the anonymous informer was wrong and you had the wrong fellow?

A. No one thing, sir. I have attempted to explain it.

Q. I beg your pardon, your testimony was about the other leads. What in there led you to believe that the letter from the anonymous informer was erroneous?

A. My answer is, no one thing.

Q. Well, give me the group of things that led you to believe.

A. I have already done so, sir.

Q. Will you repeat it?

A. If you will pardon me, it is your statement that I reached the conclusion that the testimony of the anonymous informer was erroneous. I never reached that conclusion. The conclusion I reached was that we had the wrong man and we had a man who was not in a position to give us information about the communist conspiracy.

Q. And what in there led you to believe it?

A. The fact that this witness, Mr. Shelton, was ap-
[fol. 158] parently testifying with openness and frankness, and that his testimony was believable, and that he had eliminated himself on the basis of his testimony taken at face value from any connection with the other individuals named Shelton whom we knew to be communist, and I just wanted one more question. If he had answered "no" to the question as to whether he was a member or had been a member of the Communist Party, I would have been willing at that time to have accepted it at face value. I would then have concluded, I think, that some way, somehow, we had made a mistake and we had not brought before us the Shelton that our informer had brought to us.

Q. Isn't it a fact, Mr. Sourwine, there isn't one question in there that you could say his answers were such that it would have given you such a feeling? There isn't one

question here about communism, is there, until he pleads his privilege?

A. Now, split that question up and I will answer both parts. There is nothing in here about communism, but I was present, sir, and you asked me what my conclusions were, and I have testified to it, and the fact that I had that reaction is the fact.

The Court: I think that is about all the witness could say, counsel. He has given you an answer to the question: whether you accept it or not is another thing.

Mr. Rauh: I will put the question this way, if Your [fol. 159] Honor please:

By Mr. Rauh:

Q. Will you point to one question that he answered that demonstrated to you that you had the wrong Shelton, based on the fact that you previously had a tip that there was a man on the Times who was a communist? Point to one question. That is all I am asking.

A. I am sorry, that question isn't susceptible of an answer. You will have to rephrase it, sir.

Mr. Rauh: I ask that it be answered, if Your Honor understands it.

The Witness: Will the reporter read it back?

The Court: You may read the question back, Mr. Reporter.

(Question read.)

Mr. Hitz: I object to that. I don't see how the witness can understand it; I am sure that I can't.

Mr. Rauh: I will rephrase it, if counsel objects.

By Mr. Rauh:

Q. At the time Mr. Shelton testified, you had a statement, you have testified here, from an informer believed by you to be reliable, to the effect that Mr. Shelton had been a member of the communist group; is that correct?

A. That is not correct.

Q. Will you state it as—

[fol. 160] A. At the time that Mr. Robert Shelton testified, we had information from this informant believed to be reliable that there was a Shelton on the New York Times who was active in communist affairs, and he was on the news side, and that he was in a position to give us information. We had attempted to bring that Shelton before us because we wanted that information.

I arrived subjectively, as I have indicated to you, after some preliminary questioning here, and after we had eliminated these other leads, at a state of mind where I was willing to accept, and in fact anticipated, a statement from the witness that he had not been a communist and knew nothing about communist activity, and if I had received such a statement, since it was what I would have expected, I would have dropped the questioning right there.

Now, Mr. Rauh, it is not a question of one witness. I have questioned a lot of witnesses. I am not trying to set myself up as an expert, but I have had some experience, and out of that experience there grows a feeling as to when a witness is telling you the truth and when he is fencing with you. One of the indicia of these communists is the way they fence with you. This witness did not appear to be fencing. He is a clean-cut college boy type, and he appeared to be giving a straightforward answer, and all of the answers were such that if I believed them, they helped to take him further and further away from [fol. 161] the communist area. The answer by itself doesn't mean anything. The question by itself doesn't mean anything perhaps. But bearing in mind the information which was available to me—for instance, in one case there was a man by the name of Shelton who had lived in a community in the southwest, who was known to be active in the Communist Party. Shelton was one of his aliases. He was approximately in the age group of this man, but that man was known to have been for some years in the southwest. This man had lived during that same period, according to his testimony, in Chicago. So it eliminated that.

As I eliminated all of these things, I arrived at the conclusion that this was not the man; this was not the

man we had tried to get, and I would have retained that conclusion, I think, I would have accepted it, if he had answered the question about communism by stating that he was not a communist and had never been a member of the party.

Q. Isn't it a fact—I ask you to look at Page 4 of Government's Exhibit 6—that the first question you asked Mr. Shelton after his education and location, he raised a question of pertinency?

A. This testimony has all been read. I don't think that is absolutely correct. The first question I asked him was his name and whether he had a middle initial. Then I got his address. Then I got his business. Then I asked him how [fol. 162] many copy editors there were. Then I asked him how long he had been employed there. Then I asked him about his prior employment. I hadn't yet reached education. We covered prior employment in several questions. I asked him if he was a college graduate, and he said he was. And I asked him where. Then I asked him about residence. Does that answer your question?

Q. What was it in any of those questions that made you think you might have the wrong man?

A. No one of those questions standing alone made me think.

Q. What was it in the totality of it?

The Court: I think the Court will have to take a hand in here, counsel. I think he has answered that question about four or five times. There is no use in continuing to pursue the same—

Mr. Rauh: If Your Honor please, at this time, I would like to request the production of the letter which counsel has testified to that included, I take it, the statement a man named Shelton, employed in the news department of the New York Times, was a member of the communist group on the Times, active in its affairs.

I base that request on the fact that the initial subpoena to Willard Shelton, who was a prominent and respected newspaperman in the City of Washington—and the cross [fol. 163] examination of Robert Shelton demonstrates that the letter, while some letter may exist, could not possibly

have been in those terms, because had they been in those terms, it would never have been a case of mistaken identity with Willard Shelton and could never have created the cross examination which occurred at the time the defendant appeared before the executive session.

The Witness: I am sorry, Mr. Rauh, I can't give you that letter. It is confidential and it contains information outside of this case which is confidential to the committee.

Mr. Rauh: If Your Honor please, now the sole question is one of whether we are entitled to it if it is not confidential. The Government can prosecute or not prosecute. But the cases are clear, and I would like to submit a memorandum, if there can be any question on it. The cases are clear that when the Government comes into court to prosecute, if there is a document that will aid the defense and it is material, the Government's choice is to drop the prosecution or make it available. Therefore, if we are correct in our contention, Mr. Sourwine's belief that it is confidential is not the answer. What is the question is whether we are entitled to this, apart from Mr. Sourwine's belief, and on that, it seems to us, we have made our case.

Mr. Hitz: Your Honor, we object to the demand made [fol. 164] for the reason that it is not material to this issue. The truth of what that document may state is not in issue, and in addition to that, the subject matter is not material, because it makes no difference whether there were reasonable grounds for this witness to have been called before the committee. It is not the pertinency of an individual, that is, the relevancy of an individual, or the information he may have that is important. It is the pertinency of the inquiry, if pertinence may be made of anyone, with or without probable cause.

The Court: The objection will be sustained. You may proceed.

Mr. Rauh: If Your Honor please, I don't know why I am so unduly worried about Mrs. Halleck and the boy, but I am concerned—

The Court: Counsel, the Court has sustained the objection.

Mr. Rauh: Oh, no, I am sorry. I was going to make a different point. I was going to say that young Halleck is still around, and I think possibly Your Honor might want to put him on this afternoon, because he has this problem of bringing his wife and baby home tomorrow.

The Court: Oh, yes, if you want to call Mr. Halleck, if you call him now—

Mr. Rauh: I am just trying to accommodate the fellow.

[fol. 165] The Court: Yes, well, that is perfectly all right.

Mr. Hitz: There is no objection.

The Court: There is no objection. Even if there was objection, the Court would overrule it.

Mr. Sourwine, you may step aside for the moment.

Mr. Hitz: Do I understand the cross examination has not been finished?

Mr. Rauh: It has not been finished.

Mr. Hitz: I see.

Thereupon CHARLES W. HALLECK was called as a witness by and on behalf of the defendant, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Rauh:

Q. Mr. Halleck, would you please state your full name?

A. Charles W. Halleck.

Q. And your address?

A. My home address is 5108 Nahan Street, Washington 16.

Q. What is your present occupation?

[fol. 166] A. I am a law student.

Q. Where?

A. George Washington University.

Q. Were you employed in the past by the Internal Security Subcommittee?

A. I was.

Q. From when to when?

A. I couldn't give you the exact dates. It was approximately a year, the duration of a year, and concluded—my employment concluded a year ago.

Q. You were employed by the Internal Security Subcommittee on November 14, 1955?

A. I presume so, yes.

Q. What was your position at that time?

A. I was research assistant to Mr. Benjamin Mandel.

Q. And you did engage in serving subpoenas, too?

A. I did.

Q. Did our office contact you last week with respect to the subpoena you served on the defendant in 1955 and the possibility of your testifying at the trial?

A. You did.

Q. And thereafter, did you have a conversation with Mr. Sourwine?

A. I did.

Q. After speaking with Mr. Sourwine, did you report [fol. 167] to our office that you were a hostile witness and reluctant to testify?

A. I don't believe it was quite in that tone. I tried to convey to you, sir, I wasn't particularly sympathetic, but I would tell whatever I knew as truthfully as I could remember.

Q. I was making no assertion to the contrary. The word that I particularly remember Mr. Silard telling me you used was that you were a hostile witness; is that fair?

A. I don't remember whether I used that word or not.

Mr. Rauh: If Your Honor please, we would request the right to cross examine Mr. Halleck as a hostile witness, instead of having to examine him—

The Court: Well, I believe on the theory of leading questions, you may proceed, if I think it is material.

Mr. Rauh: Thank you, sir. I don't know if it is particularly necessary, but since we felt that the word had been used, we make this request.

By Mr. Rauh:

Q. Do you recall serving subpoenas for the Internal Security Subcommittee on or about November 16, 1955 upon employees of the New York Times?

A. I don't have a particular recollection of the date exactly. I guess it was about that time. I did serve sub-
[fol. 168] poenas on employees of the New York Times.

Q. I show you Defense Exhibit No. 1 and ask you if this is the subpoena that you served upon the defendant?

Mr. Hitz: Mr. Rauh, might I ask, is that an identification exhibit or has it been offered and received?

Mr. Rauh: No, it is still an identification exhibit, because I didn't offer it after Mr. Sourwine implied he had not seen it.

The Witness: I presume so. This must be, if it is—it must be the copy that would have been left with the defendant, because any service of subpoena that I made and returned would have had the back filled out with the return on it.

By Mr. Rauh:

Q. Is this your handwriting on there?

A. It looks like it might be, yes.

Q. The words, "or Robert Shelton," are those three words in your handwriting, Mr. Halleck?

A. I believe they are, yes.

Offer in Evidence

Mr. Rauh: We offer Defense Exhibit No. 1 for identification in evidence.

Mr. Hitz: No objection.

(Defendant's Exhibit 1 for identification was received in evidence.)

By Mr. Rauh:

[fol. 169] Q. Now, Mr. Halleck, this affidavit is dated November 14, 1955. On or about that date, did you go to New

York with a number of affidavits for New York Times employees?

A. I don't recall taking any affidavits.

Q. I mean, any subpoenas.

A. As I say, I don't remember the exact date, but I did take some subpoenas to New York to serve, yes.

Q. What did you do then? Did you talk to someone at the New York Times about the service of these subpoenas?

A. Yes, I did.

Q. And what arrangements were made for you to serve them?

A. I went to the personnel office and told them why I was there and asked if they would help me locate the people that I was looking for.

Q. And did you ask them for Mr. Willard Shelton?

A. I believe, yes, that I showed the names, the list of names that I was going to serve subpoenas on them, and it must have been that name, too.

Q. And what did they tell you?

A Well, as I indicated to you earlier, this is all hazy in my recollection. I had no particular reason to remember this; it has been sometime ago, but as I recall—I don't know of any exact words that they might have used or anything they might have told me exactly. I gathered—well, [fol. 170] I couldn't say.

Q. Did you ask them if they had a Willard Shelton?

A. I must have, yes.

Q. Did they tell you they didn't have one?

A. I believe so, yes.

Q. You can't remember anything beyond that, Mr. Halleck?

A. I believe they indicated to me, as I recall, that there was no one there by the name of Willard Shelton but that there were one or a number of persons by the name of Shelton employed by the New York Times. I believe the subpoena is dated "New York Times, New York."

Q. That is correct, yes.

If you can remember, did you ask them if there were other Sheltons or did they volunteer that there were other Sheltons?

A. I don't remember that.

Q. Who prepared this subpoena that you took along with you?

A. I have no way of knowing. I did not.

Q. Who gave it to you?

A. Some member of the subcommittee staff at the time I was instructed to go up and serve the subpoenas. I don't recall exactly whether it was one of the girls or whether it was Mr. Sourwine.

[fol. 171] Q. You went off on this trip with all these subpoenas without remembering who it was that instructed you to serve them?

A. Well, that is understandable. I was, as I say, employed by the subcommittee, and I was sort of down on the bottom rung of the ladder, as it were, and there were several persons that were in a position to tell me to go ahead. My understanding was that the subcommittee wished the subpoenas served, and I suppose it came down through Mr. Sourwine, and one of the girls or Mr. Sourwine there gave me these and said, "Here, you are to take these up and serve them."

Q. Do you remember how many Sheltons there were on the Times, Mr. Halleck?

A. No, I don't.

Q. But there was more than one?

A. My recollection is that there was, yes, sir.

Q. Now, when you found out there was no Willard Shelton, you didn't go right to see the defendant, did you? You checked back here to Washington?

A. I can't recall exactly. I know I checked back with the subcommittee in Washington concerning the situation.

Q. That was my question. You did check back with Washington?

A. Yes.

Q. What did they instruct you to do?

[fol. 172] A. Well, as I recall, I made several phone calls. I was there, I believe, three or four days serving these subpoenas, and I called periodically, perhaps in the morning and then in the evening, and then again in the next morning and then again in the evening. As I recall, on one

of my earlier calls back, I informed—it would have been probably Mr. Sourwine or Mr. Mandel—of what the situation was, and then told them that I would await instructions until such time as I heard from them as to what to do.

Q. And then you received instructions?

A. As I recall, yes.

Q. And what were the instructions?

A. To put in the name of Mr. Robert Shelton and serve the subpoena on Mr. Robert Shelton.

Q. And at the time, Mr. Sourwine was it who gave you this instruction?

A. I believe so. As I recall, my conversations were either with Mr. Sourwine alone or with both Mr. Mandel and Mr. Sourwine.

Q. At the time Mr. Sourwine instructed you to serve Robert Shelton, did he tell you that they had information that it was Robert Shelton who was the one you were looking for?

A. He didn't tell me anything; I guess he didn't have to.

Q. He just told you to serve Robert Shelton?

[fol. 173] A. That is correct.

Q. He didn't tell you any reason why you should serve him instead of Willard?

A. No, sir, not that I recall.

Q. I believe you did testify just a minute ago that you did talk to Mr. Sourwine last week about this question of testimony.

A. Yes, after you called me, I did.

Q. Will you please relate that conversation? First, how long a conversation was it?

A. Very brief.

Q. Would you please relate it?

A. If that is proper, yes.

The Court: It is.

The Witness: Actually, I started out by telling Mr. Sourwine that I was a little concerned about my being called to testify and thought perhaps I needed a little legal advice from someone who knew what the story was and that I was inquiring of him perhaps as a client of an attorney, and then went ahead to continue my remarks under that score.

I inquired—well, as I recall, generally as to whether I ought to, in view of the fact of my employment with the committee and the work I did was what I considered of a certain confidential nature—whether or not I ought to come down and discuss this openly with you or whether [fol. 174] I ought to wait and let the judge determine whether or not what I might say might be admissible and proper, and that was about the gist of it. Mr. Sourwine, as I recall, told me that that perhaps would be the best course to follow.

By Mr. Rauh:

Q. Was anything said about the service of the subpoena on the defendant?

A. By Mr. Sourwine or myself?

Q. Yes, by either of you.

A. Well, I told him that my recollection was very hazy on it, as I have told you, that I really had no particular cause to remember what was said or anything about it explicitly, that I did remember going up and serving him the subpoena.

Q. That was all that was said in this conversation?

A. That is all I recall. We chatted along. I talked about the current condition of my wife, and he expressed interest in that.

Q. Now, what was the privileged or confidential nature of the testimony you felt that you might be able to give us?

A. I didn't particularly know. I was just caught completely off-guard by your calling me, and I was a little puzzled by the whole thing. So I thought that perhaps wiser [fol. 175] heads than mine might be able to give me a little advice as to just how I ought to conduct myself.

Q. Did you think it could possibly be privileged or confidential that you had served the defendant?

Mr. Hitz: I object. It is not relevant nor material.

The Court: I think that is for the Court to determine. You are asking for an opinion there.

Mr. Rauh: I was raising the question that there is something possibly being withheld.

The Court: The witness has told you the reason. I can't see any use in taking further time of the Court in testimony about that.

By Mr. Rauh:

Q. Did you have a discussion with Mr. Shelton at the time you served him, the defendant, that is?

A. I have been trying to think about that, and I can't remember any particular thing that might have been said. Every time I served a subpoena on anybody, naturally, you had a discussion: they threatened you or did any one of a number of things—talked at length with you. I don't remember what they might have said. You just don't stick it in their pocket and walk away from them.

Q. Isn't it a fact you said to Mr. Shelton something approximately as follows: Can you think of any reason [fol. 176] why we would be calling you?

A. I don't remember whether I did or not.

Q. Didn't you discuss with Mr. Shelton this problem of the subpoena you had for him being in the wrong name?

A. I may have, but I do not recall what was said at the time. It is in my memory that that might have been, yes.

Q. You might have said to him: Do you have any reason for knowing why we would want you?

A. I can't say whether I said that or not. I just don't remember.

Q. But if Mr. Shelton had said that was said, you couldn't dispute it?

A. Well, naturally, if I don't remember, I couldn't dispute anything.

Q. How long do you think this conversation went?

A. It could have been a minute; it could have been three minutes, five; I don't recall.

Q. Do you remember saying anything to Mr. Shelton about, were you ever a member of the newspaper guild?

A. No, I don't remember that. As I say, I don't remember any of the details of the conversation, Mr. Rauh, and you can ask me whether I asked him if he had two heads and I couldn't deny it, but I couldn't confirm it either.

Q. Let me try to refresh your recollection a little bit. [fol. 177] Did Mr. Shelton say to you, in answer to a question by you about why he might have been called, that he had opposed the discharge of Barnett? Do you remember that?

A. He might have. I don't remember it exactly.

Q. Do you remember saying that well, opposing the discharge of Barnett is no crime? Do you remember saying that?

A. No. I doubt seriously if I would have said that. I wasn't in a position to express my opinions of what was or was not correct to a witness or a person being subpoenaed.

Mr. Rauh: I have no further examination.

Cross examination.

By Mr. Hitz:

Q. Mr. Halleck, how many subpoenas did you have to serve in New York?

A. As I recall, it was in the neighborhood of thirty, and perhaps a few more.

Q. Did you have some to serve on persons who were not employed at the New York Times office?

A. Yes, I did.

Q. Did you show a list of the persons who you had subpoenas for to anybody at the Times office when you first went there?

A. I believe I indicated to them the names of the persons whom I was seeking at the New York Times.

[fol. 178] Q. Did you show them a list or did you show them the subpoenas or did you give them the names orally?

A. I don't remember that exactly. It would have been only the persons at the Times that I would have showed to them or told them, as the case may be.

Q. Do you remember to whom you spoke there on the Times about the prospective service of subpoenas as to their employees or some of them?

A. It would have been someone in the personnel office, and as I recall, I spoke to the gentleman who was the head of that personnel office.

Q. Where did you first learn the name of a man named Robert Shelton?

A. From someone in the personnel office.

Q. Themselves employed by the Times, so far as you could tell?

A. That is correct.

Q. Did you also inform that person, whoever it was, of the names of the other people who you had subpoenas for?

A. Do you mean at the Times or other than there?

Q. No, the person who ultimately gave you the name of a Robert Shelton, did you tell him who the other persons were that you intended to serve?

A. Yes.

Q. Was it before or after you gave him the full list [fol. 179] that he named Robert Shelton as an employee of the Times?

A. I couldn't remember.

Q. Did the person who named Robert Shelton to you as an employee of the Times say that likely he is the one that you want?

A. As I recall, yes. I believe there was something along that line. I can't recall that that might have been the exact words, but there was some indication, I believe, from up there in the personnel office at the Times that Robert Shelton might be the one for whom the subpoena was meant.

Q. And was that not after that person had learned from you who it was who would receive the other subpoenas?

A. It probably was, yes, sir.

The Court: Mr. Halleck, did you know, did you have any information when you left here, as to the particular department in the New York Times where the Shelton you were looking for was working?

The Witness: I can't remember exactly, Your Honor. I don't believe I did. But that wasn't information that was generally imparted to me.

By Mr. Hitz:

Q. Did they inform you in the office at the New York Times as to what part of the Times Robert Shelton worked in, whether it was the news side orbit or mechanical?

A. They must have, yes, because my primary purpose [fol. 180] in going there was—when I realized there were some 4- or 5,000 employees up there, I realized I couldn't just hunt around the building and hope to find people, and they more or less indicated to me, as I recall, where I might locate the persons that I had to serve subpoenas upon.

Q. Well, that isn't exactly what I meant. When whoever mentioned the name Robert Shelton did so, did he tell you what part of the Times he worked in, that is, what his job was generally?

A. Probably did. As I recall, they did for most of them, if not all of them.

Q. Now, of those persons, only one person was the subject of a subpoena that was apparently incorrectly named; is that right, sir?

A. I don't remember that. It might possibly have been that there might have been another, but I can't recall.

Q. In any event, did you inform Mr. Mandel or Mr. Sourwine, whichever the case might be, what it was that you learned from the personnel people at the Times with reference to the Shelton subpoena?

A. Yes, I did.

Mr. Hitz: That is all.

Redirect examination.

By Mr. Rauh:

Q. I believe you said, in answer to a question from Mr. [fol. 181] Hitz, that the New York Times man might have said that this was likely the one you want; is that correct?

A. I say yes, he might have said that.

Q. He might have said that.

At the time, he was referring to several Sheltons on the Times, was he not?

A. He was trying to help me get the subpoena to the right person. Now I had the impression that there was a Mr. Shelton in the New York Times because the subpoena was dated there, and if there was that person, I wanted to be sure to get it to the right person. I didn't want to give it to a person that wasn't on there.

Q. Did you understand him to mean by the words, "likely the one you want," that this is the one who is in the news department, not the janitor, not the linotype operator?

A. Quite frankly, Mr. Rauh, the person that I talked to seemed to be fairly familiar with most of the names. It didn't seem to come as any great surprise to him.

Q. I didn't follow that. What did you say?

A. As I recall, this personnel head seemed fairly familiar with the list that I had. It didn't come as any great surprise to him.

Q. No, that isn't quite what I was asking. Did you understand his statement that "it is likely the one you want" to refer to the fact that there were several Sheltons and [fol. 182] this was the one in the news room, not the janitor, not the linotype operator, or did you understand it some other way?

A. My understanding was that the person whom I gave the subpoena was the one to whom the New York Times officer referred as most likely the one I wanted for the subpoena. I am not sure I am getting you.

Q. Did they give any reason why he was the most likely one? Was the reason that he was in the news side, not the linotype operator, the reason?

A. I don't recall that that was the reason.

Q. You don't recall what the reason was?

A. I have a very vague recollection that there was something said about the FBI having been there to look into some of these things and that there might have been some reference, as I recall, to this Mr. Shelton in connection with that.

Q. Did they say the FBI had been there looking at a number of people on your list?

A. I received that impression from him, as I recall. What his exact words were, I couldn't tell you.

Q. That the FBI had been there on a number of the same people you were there to subpoena; is that the point you are making?

A. I don't remember exactly what he said. I know that the questions—they mentioned the FBI as having been [fol. 183] there, and as I recall, it may have been that in

connection with that they said this Mr. Shelton was perhaps likely the one I was looking for.

Q. Did he tell you the FBI had been there to see Mr. Shelton?

A. I don't recall whether he exactly said they had been there to see him or not. It runs in my mind he might have.

Q. You can't remember whether he said that or didn't say it?

A. I mean, you are trying to pin me down to something that I am not completely clear in my recollection. There is a strong possibility, that is the best I can give you.

Q. Mr. Halleck, this isn't so long ago. This is just a year or so ago. Your committee asked questions going back ten and twenty years. Now I am just asking you, did he or didn't he say the FBI had been in to see Mr. Shelton?

A. I don't recall.

Mr. Rauh: Thank you.

Mr. Hitz: No further questions.

The Court: You may stand aside.

Thank you, Mr. Halleck, and you may be excused.

You have no further use for him?

Mr. Rauh: No, sir.

Thank you, Mr. Halleck.

[fol. 184] The Court: Recall Mr. Sourwine.

Thereupon JULIAN G. SOURWINE resumed the witness stand, and having previously been duly sworn, was examined and testified further as follows:

The Court: You may proceed with your cross examination.

Cross examination (resumed).

By Mr. Rauh:

Q. I show you Government Exhibit No. 3 and ask you what that is?

A. This is a certification by Joseph A. Davis, chief clerk of the Senate Committee on the Judiciary, with respect to

a resolution adopted on January 20, 1955 by that committee.

Q. Are you familiar with the practice of the Judiciary Committee in that regard?

A. In regard to certifying minutes, sir?

Q. Yes.

A. Yes, sir. The chief clerk does it.

Q. Does this mean that this is a part of the minutes of the Judiciary Committee of that day? I mean, this is taken out of the minutes for that day?

A. I would take it to mean that, yes, sir.

Q. Now, are these minutes secret or confidential in any way?

[fol. 185] A. The minutes of the Judiciary Committee are the confidential property of the committee, yes, sir, and usually so regarded.

Q. Your understanding is that this is an extract from the minutes of the Judiciary Committee? It doesn't say that.

A. No. This is a certification of the text of a resolution which was adopted on that day. I would have no question that Mr. Davis got the text of the resolution from the minutes. It would be there if it was adopted.

Mr. Rauh: If Your Honor please, you will recall that I was looking at this at the time that I said no objection rather quickly. It seems to me that we ought to have the original as the best evidence. I thought this was the minutes, but I misread it. This is apparently an extract from the minutes, although it doesn't even say it is an extract from the minutes. It says that "the following resolution was adopted."

Now, from all we know, this resolution was never at that time put to writing, and I think we should have the best evidence of this. I read too quickly, I think, at that time. I was trying to expedite things, too. But I really feel we should have the minutes or at least a certification that this is an extract of those minutes. It has no significance as a resolution adopted if it wasn't in some way put [fol. 186] into some formal document of the committee. I would have objected at the time, but I didn't.

The Court: If you had made a timely objection, Mr. Rauh, to the admission of that exhibit because it wasn't the original or a properly certified copy, exemplified copy, the Court would, of course, have sustained it. Are you questioning now that it is a correct copy of the minutes?

Mr. Rauh: Yes, because it doesn't even purport to say that it is from the minutes. It was only from Mr. Sourwine that I elicited the information that it might be from the minutes.

The Court: That is right, and he testified that it was.

Mr. Rauh: He didn't testify that this was from the minutes. He testified that the practice was to take it from the minutes.

Now if Mr. Davis had certified that the following resolution was adopted on motion of Senator Eastland and appears in the minutes of that day, I think the certification would have been all right and I wouldn't have made an objection even now. But what I am concerned with is that something was admitted, in my hurry to be cooperative, that is not an extract from the minutes. If Mr. Hitz can assure us that this is an extract from the minutes, why, I would be inclined to take his personal assurance.

[fol. 187] Mr. Hitz: I can't do that, but I can say this, that there has been a stipulation entered into, it is true it is an oral one, with Mr. Silard of Mr. Rauh's staff, to the effect there would be no objection to documents of this sort based on the authenticity of the particular document. That is the reason we do not go further in having this certified. If Mr. Rauh doesn't care to go forward with that stipulation, there may be other documents that I will not go forward with on my side of it, too.

Mr. Rauh: I am not in any way going back on any stipulation, Mr. Hitz. I am not suggesting that if this document had contained the statement that it was taken from the minutes we would in any way object to it.

The Court: Let me ask, counsel, did each of you exchange copies at the time that you proposed to bring?

Mr. Hitz: We did not, Your Honor.

The Court: But you did have a stipulation.

Mr. Hitz: We did have a stipulation and an understanding both orally, yes, Your Honor.

Mr. Rauh: If this had said that this was an extract from the minutes, I wouldn't think of questioning it. Indeed, if he will say that, I wouldn't question it.

Mr. Hitz: I can't say it. May I see the document, though?

Mr. Rauh: We are not suggesting that this document [fol. 188] isn't authentic from the clerk. We are saying that this document on its face does not state that it is an extract from the minutes of that date, and I am simply suggesting that we clarify that point. I think at the time this was admitted, sir, I said I was surprised, and I didn't take long enough to examine it.

Mr. Hitz: Well, perhaps we can clear it up in this fashion:

Were you present, Mr. Sourwine, at any time on January 20, 1955 when any resolution was made and passed by the Judiciary Committee having to do with the continued existence of the subcommittee?

The Witness: No, sir, I was not.

Mr. Rauh: Might I make the suggestion that overnight Mr. Hitz ascertain whether these are from the minutes, and if he says they are from the minutes, that will be fine by me?

The Court: Yes, I am sure there is nothing confidential about finding out whether it is an excerpt or not.

Mr. Hitz: I don't see that problem. I wonder if we can take it step by step. First off, does Mr. Rauh seek to change his position and now object to the document's admission in evidence, whereas he did not before? I think that is No. 1 step to be taken.

The Court: Yes, the objection comes pretty late, I agree [fol. 189] with you, counsel, but, of course, the Court wants to be absolutely fair. The Court assumes, of course, that this is a copy, an exact copy, whether it has got the proper certificate on it or not. What is the purpose? Is there some question in your mind as to whether this—

Mr. Rauh: This may simply be an oral resolution subsequently reduced to writing and never part of the minutes or an official part of the committee operations, sir. If it only had said on it that it was a part of the minutes, why, no one would question its authenticity or anything else about it. After all, the authority of the subcommittee is a major question at issue.

The Court: Well, Mr. Sourwine, apparently you are going to have to come back in the morning. It looks like we are not going to be able to finish today. Will you be able to check into that and tell us in the morning? You will take Mr. Sourwine's word for it, wouldn't you?

Mr. Rauh: Yes, sir.

The Witness: Yes, sir, I can check it.

The Court: That is what we will do.

By Mr. Rauh:

Q. Mr. Sourwine, is there any published statement of the authority of the subcommittee?

A. You mean the Internal Security Subcommittee?

Q. Yes, sir.

[fol. 190] A. Yes, sir. The document that you asked me about, S. 366, has been published in a good many forms as an original Senate resolution and in some of our reports and in many of our hearings.

Q. Is there any published document, Mr. Sourwine, giving the Senate Internal Security Subcommittee the authority in S. 366?

A. I am sorry, I don't understand you.

Mr. Rauh: Will the reporter repeat the question?

(Question read.)

The Witness: Oh, you mean is there a published document which shows that the authority conveyed by S. 366, by the full committee, has been passed on to the subcommittee?

By Mr. Rauh:

Q. Precisely.

A. Yes, I think there are such documents. I think that the committee calendars for successive years since 1950 would show the composition of the Special Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws—is such evidence.

Q. By calendar, are you referring to this document?

A. No, sir, I am not. This document is a page from the calendar, however.

Q. But you say there is something in the calendar other than that?

[fol. 191] A. Yes, sir. The table of contents, which is on the other side of what you showed me, shows a list of committee members, legislative calendar, legislation pending in standing subcommittees, legislation pending in session subcommittees. The Internal Security Subcommittee, so-called, or to use its technical name, the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Laws, is a standing subcommittee, and as such it is listed inside the front cover—not inside the front cover, about Page 3, I think, of the calendar. It is also listed in the back of the calendar, where there is a separate listing of bills and legislation which is referred to and is pending before that committee at the time the calendar is printed, but every issue of the calendar shows the membership of the subcommittee at the time that issue is printed.

Q. And does it show the authority of the subcommittee?

A. In terms, no, sir. You asked me if there was any printed document that showed the conveyance of the authority to the subcommittee.

Q. And I repeat the question: How does this show the conveyance of the authority from the Judiciary Committee to the subcommittee simply by listing the members?

A. Well, I think it is a reasonable conclusion, Mr. Rauh, that if the Judiciary Committee has authority as a whole committee or as a subcommittee thereof to pursue an in-

[fol. 192] vestigation of the Internal Security Act and other internal security laws, and if its calendar shows that there is a standing subcommittee with that name and lists the members thereof, that that standing subcommittee is authorized by the full committee to go forward. Certainly every member of the committee has knowledge of that calendar.

Q. You are relying on the name of the subcommittee?

A. No, I am not relying on it at all. I answered your question as to whether there was a printed document which showed there had been a printed delegation, and I told you in my opinion the calendar is such a document. Then

you asked me in substance if there was a printed document which showed the actual conveyance of the authority, and to the best of my knowledge, there is not.

Q. There is no document that shows the conveyance?

A. I do not know of a document which in terms sets forth the action of the Judiciary Committee in conveying this authority to the Internal Security Subcommittee.

Q. How would the defendant, then, know what the authority of the committee was?

A. By defendant, you mean defendant where, here?

Q. Defendant, after he had refused to answer the questions.

A. There are no defendants before the committee, sir. The committee is not a court.

[fol. 193] Q. All right, how would a witness know the authority?

A. Well, many times witnesses have asked for the committee's authority, and I have on such occasions furnished them with a copy of S. Res. 366, and it has seemed to satisfy them.

Q. But other than such delegation as may appear in the calendar, you know of none?

A. I didn't say that.

Q. Will you state it any way you please?

A. Mr. Rauh, you ask me questions. Don't ask me to state something the way I please. I have stated it the way I pleased. Now you have twisted the words. You are attempting to get me to say something that is slightly inaccurate, and I don't desire to do it if I can avoid it.

Q. Will you please list all the public delegations of authority from the Judiciary to the subcommittee?

A. All the public delegations of authority?

Q. From the Senate Judiciary Committee to the Internal—

A. By that, you mean printed documents?

Q. Yes, anything that is published.

A. I don't know of any such printed documents.

Q. Do you know of any public documents whatever, other than the calendar, that shows any delegation of authority from the Senate Judiciary Committee to the Internal Se-

[fol. 194] curity Subcommittee?

A. Which shows it?

Q. Yes, shows it in any way.

A. Yes, I think the fact that the Judiciary Committee has reported to the Senate on numerous occasions the reports of its Subcommittee on Internal Security certainly shows its ratification of the acts of that subcommittee. But, again, that does not contain a specific statement in terms of the delegation, if that is what you are trying to get at.

Q. And as far as there is, you know of none?

A. As far as that goes, I know of no public printed document that contains in terms the actual delegation of authority.

Q. May we take the word "printed" out of that answer? You know of no public document that makes the delegation—

A. Then you get into a hassle of whether the minutes of the committee are a public document, and I don't know what is in your mind on that point.

Q. Didn't you just testify they were confidential?

A. I testified that I considered them confidential, sir. They are the official minutes of an official body which is a part of one of the branches of the Government of the United States.

Q. Do you know of any non-printed public document [fol. 195] containing a delegation of authority from the Judiciary Committee to—

The Court: Oh, I think we are going a little too far, counsel, now. I want to be just as generous as I can be, but the witness has answered you about half a dozen different ways, and we don't propose to have any filibuster here in this court. That is confined to the United States Senate.

By Mr. Rauh:

Q. What was the question under inquiry before the subcommittee when the defendant testified?

A. You mean the specific questions I asked him?

Q. No. I refer you to 2 U.S.C. 192, the contempt statute, which says that it shall be contempt for refusing to answer

any question pertinent to the question under inquiry. I ask you, what was the question under inquiry when the defendant testified?

A. Well, there are two ways to answer that. Broadly, the question under inquiry was the scope and extent and activities of the communist conspiracy against the United States, more specifically, as it applied to the New York area, and on the particular day he testified, and with regard to his testimony, still more specifically within that broader area, and we endeavored to get information about communist activity in the New York Times or in connection with employees of the New York Times or by such employees.

[fol. 196] Q. So there are three gradations.

A. You can make as many gradations as you want. I am attempting to answer your question.

The committee, every time it sits, Mr. Rauh, sits with its full authority. That authority is fixed by the Senate of the United States, and neither the full committee nor the subcommittee can change it. I am trying to be responsive to your question.

When the committee was questioning this particular witness, within the area of its much broader investigation, it was concerned with the particular area of that broader investigation which concerned communist activity among newspaper people, communist activity on the New York Times and communist activity in an effort to infiltrate the Typographical Union in New York.

Mr. Rauh: May I ask that that be marked as Defendant's Exhibit for identification No. 2?

(Defendant's Exhibit 2 was marked for identification.)

By Mr. Rauh:

Q. I show you Defendant's Exhibit for identification No. 2 and ask you what that is?

A. This is a mimeographed sheet entitled "Resolutions and Rules Adopted by the Internal Security Subcommittee [fol. 197] of the Committee on the Judiciary of the United States Senate at its Meeting February 7, 1955." It appears to be one of the copies which the committee had mimeographed of those rules.

Mr. Rauh: We offer it in evidence.
Mr. Hitz: No objection.

(Defendant's Exhibit 2 for identification was received in evidence.)

By Mr. Rauh:

Q. Would you read, Mr. Sourwine, please, the first sentence of No. 1?

A. (Quoting):

"No major investigation shall be initiated without approval of a majority of the subcommittee."

Q. Was there such an approval prior to the time that this investigation that you have referred to was undertaken?

A. Oh, yes, sir, in the sense that the investigation into the scope of communist activity was undertaken almost at the outset of the committee's work, and some several years before the adoption of this particular rule here. If you are asking me whether there was in terms a committee approval, a subcommittee resolution approving the inauguration of the hearings in New York, I shall have to state there was not. But let me call your attention to the fact that [fol. 198] this is not the initiation of a major investigation and that a majority of the subcommittee were present at the hearings which were held in Washington at which Mr. Shelton testified.

Q. You didn't consider this investigation at which Mr. Shelton testified a major one?

A. I did not consider it was initiated subsequent to the passage of this rule.

Q. That rule wasn't in effect until that date?

A. Until February 7, 1955.

Q. When was this investigation at which Mr. Shelton testified initiated?

A. I think the committee began its investigation into the scope of Soviet activity, communist activity, in the United States in late 1950 or certainly by early 1951.

Q. Is it your contention that the committee just had one major investigation, communism, and they don't need authority for any other?

A. I think the committee has one source of its power and authority, and that is S. Res. 366. I think the committee sits with that full power and authority every time it sits. I was present when these rules were adopted. I know what the committee had in mind. I know the reason for this rule. This rule was not violated in the case of the hearings which were held in New York in executive session and subsequently in Washington.

[fol. 199] Q. Will you please state the reason for the rule?

A. Yes. There was some concern, not in our committee, but in the Senate, because of activities of some other committees, over the possibility that some committee might hold a "rump" session without notice to all of the members, that there might be an important hearing that all of the members would not have notice of. It was not only to avoid that possibility, but to show that our committee had taken an affirmative position against having anything like that happen, that this rule was adopted.

Q. Now, what investigations have been considered major enough by the committee to require approval?

A. I don't recall any instance in which a separate approval for an investigation has been undertaken since this resolution was passed. Every member of the full committee has full notice of every hearing far enough in advance to be there, and there have been no complaints from any member of the subcommittee about any violation of this rule.

Q. Has any major investigation been initiated since this rule was adopted?

The Court: Counsel, what is the purpose of this line of cross examination now?

Mr. Rauh: I think they violated their own rule, sir. I think this was a major investigation and there was no approval. The witness has already testified there has been [fol. 200] no approval of it, and I think it was a major investigation. I think they violated their own rules. Whether that vitiates the decision, I am not sure. I was going to argue that.

The Court: I would doubt that.

Mr. Rauh: But I think it is clear that they have violated their own rules, and that is what I am getting at, sir.

The Witness: Do you still want an answer to your question, Mr. Rauh?

By Mr. Rauh:

Q. Yes, I do.

A. I am not sure. I don't think so, in the sense that it would involve any violation of this. However, there was a period during which I was not with the committee, a period of some eight months; I was not privvy to the committee's discussions, and I can't testify as to what the committee may have regarded at that time as anything in the nature of a major investigation being inaugurated during that time.

Q. To your knowledge, there has never been an approval under this section?

A. I do not know of one, no, sir. That section has been complied with in spirit by the full advanced public notice to every member of the committee with regard to all the public hearings that are being held.

The Court: Do you have many more questions?

[fol. 201] Mr. Rauh: I have a great number on wholly another subject.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: At this time, the Court will take a recess until 9:30 in the morning.

You indicated, Mr. Rauh, that you had a number of authorities to substantiate your position that you are entitled to have that letter subpoenaed down here. I would like to take the names of those cases in order to take a look at them.

Mr. Rauh: What I was addressing myself to was that the mere confidentiality of the material would not withhold it. I have those here.

Mr. Hitz: Your Honor, I can save some time. We concede that.

The Court: Also, on the question of materiality.

Mr. Rauh: At the moment, I was addressing myself, when I said I had the cases handy, to the proposition that confidentiality didn't affect it.

Mr. Hitz: We concede that proposition, Your Honor, that if matter is material to the defense, that the confidential character imposed upon it by the Government is not a reason for its not being produced.

The Court: I understand that clearly, but what I am trying to get at is some authority he may have showing that. Suppose they had a letter up there that is material [fol. 202] to this inquiry.

Mr. Rauh: Well, sir, I was not referring to those. I would like to produce those at 9:30. I don't have those at the moment.

The Court: If you can give me the authorities, I will take a look at them this evening myself.

Mr. Rauh: The general principle that I was going on in asking for that letter is we made a prima facie case. It is a sheer matter of credibility. I do say here in all sincerity that I think we have made a prima facie case that there is no letter saying what Mr. Sourwine says are the contents of that letter. Now I am not saying that there isn't a letter referring to a Shelton. It might even refer to Willard Shelton, for all I know. But I am saying there is no letter and that we have shown that, because if they had a letter like that, they wouldn't have issued a subpoena to a well known, definite and specific Washington newspaperman, and if they had a letter like that, Mr. Sourwine would never have cross examined the defendant the way he did, and I want this letter to show that there wasn't probable cause to go after the defendant. I don't believe this letter exists in the terms in which Mr. Sourwine has stated. He admitted—he stated it from memory—he said he hadn't seen it for over a year. This is a sheer case of credibility.

The Court: Well, I will take a look at it. He will take a [fol. 203] look at it.

(Whereupon, at 5:10 p. m., a recess was taken until 9:30 a. m., Tuesday, January 15, 1957.)

[fol. 203a] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 203b] [File endorsement omitted]

[fol. 204]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

No. 1215-56

Washington, D. C.

Transcript of Proceedings—Tuesday, January 15, 1957

The above-entitled cause came on for further trial before the Honorable Ross Rizley, a District Court Judge, at 9:30 a. m.

[fol. 206]

Proceedings

Thereupon JULIAN G. SOURWINE resumed the witness stand, and having previously been duly sworn, was examined and testified further as follows:

The Court: Are you ready to proceed, Mr. Rauh, with the cross examination?

Mr. Rauh: Yes, sir.

I might mention that I left in your office a short while ago a memorandum concerning the production of the document pertaining to the authorities at the close of the day.

The Court: I had it.

Mr. Rauh: Thank you, sir.

Cross examination (resumed).

By Mr. Rauh:

Q. I believe yesterday, Mr. Sourwine, you were requested to find out whether the language in Government's Exhibit 3, after "resolve," appears in any minutes of the Judiciary Committee.

A. Yes, sir. It does appear in the minutes. I have satisfied myself that it does.

Q. You have seen the minutes?

A. No, sir, I have not.

Q. You have not seen the minutes?

[fol. 207] A. That is correct. I made the best effort I could. I telephoned the clerk of the committee as soon as court adjourned last night. I talked with him over the telephone. I caught him just as he was leaving to catch his train for Silver Spring. He said he had the minutes before him, that it did appear in the minutes, that he remembered the certification.

I went down there this morning, Your Honor. I was there at 8:30. I waited for him to come in. I didn't leave there until time to come to court. I left there 17 minutes past 9:00. He had not come in this morning. So I have not myself examined the minutes, I am sorry. I am sure Mr. Davis is available if the Court wishes to call him.

The Court: You did receive the information from one of your associates?

The Witness: I received it from the clerk of the Committee on the Judiciary of the Senate, sir, Mr. Joseph Davis, whose signature appears on this certificate.

By Mr. Rauh:

Q. What date did he say the minutes which he had before him carried on the face?

A. January 20th, sir.

Q. Mr. Sourwine, how many persons were called in executive session in New York City in December of 1955?

A. I am sorry, sir, I don't recall the precise number. [fol. 208] I think it was in the neighborhood of forty persons.

Q. How many of these forty were employees or past employees of the New York Times?

A. Certainly a majority of them. Again, I don't remember the precise number.

Q. Is this the document I showed you yesterday, Mr. Sourwine, which you described as a profile of yourself?

A. I believe it is the same document. I said I think the New York Times calls these sort of things profiles.

Q. Does this statement from this profile by Mr. Reston refresh your recollection, that "thirty witnesses from the Times out of thirty-eight for the whole press, radio, tele-

vision and other communication media have led to the charge, not only by the Times, but by other publications, that the Times is being singled out for attack?"

Does that refresh your recollection that there were thirty-eight witnesses and that thirty of them were from the Times?

A. No, sir, it does not.

Q. How many would you say were from the Times?

A. I can't be any more accurate than I have, sir. It may very well have been thirty out of thirty-eight, but I don't remember the precise figure.

Q. Do you have any reason to believe that this is not a correct statement?

[fol. 209] A. Not in the sense that I wish to challenge Mr. Reston, but I remember at the time having seen a number of newspaper stories which gave differing totals as to the number of witnesses and as to the number that were from the New York Times.

Q. I show you a clipping from the Review of the Week of the New York Times after the open hearings. Is that what this appears to be?

A. There is no heading on this, sir, but I will certainly accept your statement that it is from the New York Times. There is no mast head.

Q. Now, does this refresh your recollection—

Mr. Hitz: Excuse me, I would like to object, even though the question hasn't been completed. I think it is objectionable so far as it has gone, and this is my objection. The question is: does this refresh his recollection? The only way he can refresh his recollection, as I understand it, from a document of this sort would be if he had previously read the document; otherwise, it is cross examination based upon somebody else's statement on a subject that this witness has testified about.

The Court: I think your interpretation of the rule is correct, Mr. Hitz.

By Mr. Rauh:

Q. Have you read this statement?

[fol. 210] A. No, sir.

Q. Had you read the profile of yourself in the New York Times?

A. Yes, sir, I have.

Q. And do you remember the statement about the thirty witnesses out of the thirty-eight being from the Times? Do you remember this at that time?

A. I did not remember it until you asked me about it.

Q. Now do you remember that this appeared?

A. No, sir, I don't, but I accept your statement that it does.

Q. Would it be possible, Mr. Sourwine, for you to check your records and determine whether the statement is correct, that thirty out of thirty-eight witnesses called before executive session were past or present employees of the New York Times?

A. Yes, I believe it would be possible to check.

Mr. Rauh: I would like to request that that check be made.

The Court: What would be the materiality of it finally, anyhow, counsel?

Mr. Rauh: The materiality is this, if Your Honor please. The Government has put in proof, or what they believe to be proof, of a legislative purpose in the investigation of [fol. 211] what I believe was an investigation of the New York Times. It is our contention, and this rebuts the proof of a legislative purpose, that this was not an intent to get information for legislation, but was a reprisal against the New York Times, and the only way I can prove it is a reprisal against the New York Times is by proving how many of the employees were from the New York Times and how many were from other papers, and from other things that happened which I will come to, but it seems to me that we must be able to be allowed to disprove the legislative purpose by proving the other purpose.

Mr. Hitz: We object, because it is not material. It may so happen that there were more communists that came to the attention of the committee that worked for the New York Times than any other paper. That might be partly because it is a large paper. It might have another reason, too. But even so, Mr. Sourwine, on the present state of

this testimony, has stated that for all he knows, it may well have been thirty out of thirty-eight. So that there is no conflict between what Mr. Rauh seeks to prove and what is the positive testimony of this witness, because he is not positive on the precise number. So that the evidence, really, is in, so far as the witness goes.

The Court: I think so. The Court will take into consideration in determining this case finally Mr. Sourwine's [fol. 212] testimony. He says it may well have been thirty.

Mr. Rauh: Would the Government make the concession that there were thirty out of thirty-eight from the New York Times?

Mr. Hitz: No, I am unable to do that. I am not unwilling to. I am unable to.

The Court: Let's get along, counsel. I am going to sustain the objection.

By Mr. Rauh:

Q. How many persons were called in open session January 4, 5 and 6, 1956?

A. Eighteen, sir.

Q. And how many of these were past or present members of the New York Times?

A. I would have to refresh myself by examining the testimony of each witness. Do you wish to have me do that?

Q. I do, but I have prepared a chart which I will show you and ask you if that helps you with this?

A. This whole thing is in evidence, isn't it, Mr. Rauh?

Mr. Hitz: It is, Mr. Sourwine.

By Mr. Rauh:

Q. Does this in any way help you to answer the question: How many of the eighteen were past or present employees of the New York Times?

[fol. 213] A. Yes, it does.

Let me read it further.

Yes, sir, it refreshes my recollection, and I would say that what you have here is probably substantially correct.

It shows 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11—it shows eleven of those as present Times affiliation; that is, in the column which you have headed "Times Affiliation," you have the word "present" eleven times and "former" three times. I think there may be a technical error in one of those names. I think one of the persons you marked "present" may have testified that he had just terminated his employment.

Q. I think that is correct.

A. I think he indicated that he felt it was as a result of being called in this hearing or the consultation he had with his employer as a result he had of being called.

Q. I think that is correct, and we included him as "present" because he had been present at the time of the initiation of the investigation.

So that it is a fact, then, that fourteen out of eighteen of the persons called in the investigation publicly were present or past employees of the New York Times?

A. Yes, I think that is true.

Q. And isn't it a fact that a fifteenth was a brother of an employee of the New York Times?

A. Yes, sir. You are referring to Mr. Fine, the exhib-
[fol. 214] itor of Artkino pictures.

Q. That is correct, sir.

Mr. Sourwine, would you agree with me on one thing, that the New York Times is an anti-communist newspaper?

A. Yes, sir, I believe that to be true.

Q. Can you point to a single story, article or editorial that has been printed in the Times that you or the committee considered pro-communist at the time you called these men?

Mr. Hitz: I object: irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Rauh:

Q. Did you or the committee have a single pro-communist piece from the Times before you when you called these witnesses?

Mr. Hitz: Objection: immaterial and irrelevant.

The Court: The objection will be sustained. The witness has testified they weren't investigating the Times.

He said he agreed with you that the Times was an anti-communist paper, and I don't think it is material. The objection will be sustained.

Mr. Rauh: May I be heard on this point, sir?

The Court: Beg pardon?

Mr. Rauh: May I be heard on this point?

The Court: Well, I will hear you briefly, yes.

[fol. 215] Mr. Rauh: Yesterday the witness, in stating several of the questions under inquiry, indicated that one of the questions was communists on the New York Times. We want to show that this was a reprisal against the New York Times. How else can we show it? I am sorry, I don't mean to put it in a question. I will put it as a statement. You are preventing us from the only way we have of showing that there was no legislative purpose, but in fact, on the contrary, a purpose of reprisal against the Times, and it was for that I made it. Of course, Your Honor's ruling is final under the circumstances.

The Court: You have your statement in the record and the ruling stands.

By Mr. Rauh:

Q. Did the committee or any staff member ever talk to the publisher of the Times about this problem of communist infiltration of the Times?

Mr. Hitz: I object.

The Court: I think it is immaterial. The objection is sustained.

By Mr. Rauh:

Q. Did the committee or any staff member ever examine the writings of the publisher or other executives of the Times to determine how they were dealing with this problem?

Mr. Hitz: I object.

[fol. 216] The Court: The objection will be sustained.

Mr. Rauh: Would you mark this for identification, please?

(Defendant's Exhibit 3 was marked for identification.)

By Mr. Rauh:

Q. I show you Defendant's Exhibit 3 for identification and ask you what that is?

A. This is the New York Times, Magazine Section 6, for February 15, 1953, which you have opened to Page 12.

Q. What is on that page?

A. At the top of the page is a three-column head: "Have We The Courage To Be Free?" subhead: "A plea that we not allow fear of totalitarianism from the left or from the right to stifle our freedom of expression." Immediately under that is a paragraph set in italics as the theme of its bicentennial celebration plan for next year: "Columbia University has chosen 'Man's Right to Knowledge and the Free Use Thereof'."

> "The article on this page is adapted from a recent speech on this theme by Arthur Hays Sulzburger, publisher of the New York Times; was delivered before the Columbia College Alumni Association."

Then comes the by-line by Arthur Hays Sulzburger.

[fol. 217] Q. Who is Mr. Sulzburger?

A. Mr. Sulzburger is the publisher of the New York Times.

Offers in Evidence and Objection Thereto

Mr. Rauh: We offer the article in evidence.

Mr. Hitz: We object to it. It is irrelevant, immaterial, and it is remote in time.

The Court: The objection will be sustained.

Mr. Rauh: I would like to make an offer of proof of the contents of this.

The Court: Very well, the record will show that you have offered the exhibit. The objection of the Government is sustained as immaterial and irrelevant.

By Mr. Rauh:

Q. The defendant testified, did he not, in a closed session on December 7, 1955?

A. Yes, sir.

Q. Did you obtain any further information about the defendant after that appearance and prior to calling him in open session?

A. I think we probably did obtain some, but nothing of any importance.

Q. Wasn't the committee's reason for repeating the interrogation in public session simply to embarrass the Times?

A. No, sir. The reason for calling Mr.—the executive session was because in the public session he had made it [fol. 218] clear that he had information which would be useful to the committee and the committee hoped that on the recall he would give us that information.

Q. And who was it that you testified yesterday had changed his mind between an executive session and a public session and gave you the testimony you were looking for?

A. I think the name that was mentioned yesterday was Dr. Bella Dodd. She is a woman.

Q. Isn't it a fact that when Dr. Bella Dodd testified, that she had had a change in status, namely, from being a communist to resigning from the party?

A. That is correct.

Q. So that that wouldn't be any evidence, would it, that Mr. Shelton, the defendant, was going to give you testimony he wouldn't give you in executive session?

A. I don't know whether he resigned from the party, sir, in the interim, and besides that, you asked me about Mrs. Dodd. You started out by asking who the witness was that was named yesterday. Now if you want to ask me whether there are other cases of witnesses who have changed their testimony, I will answer yes, there are.

Q. Who are they?

A. One of them is Harvey Matusow, who gave us on subsequent days testimony that he had refused on the day before. That comes to mind immediately, because there were [fol. 219] a number of such instances in Matusow's testimony. I will testify that there have been others, and I don't at the moment recall the names of them.

Q. You can't name another person who changed his testimony publicly over what it was in executive session?

A. At the moment, I cannot.

Q. Isn't it a fact that the Senate Internal Security Committee has indicated that Mr. Harvey Matusow was an exceptional case?

A. Oh, he was, yes, sir, in many respects, but not in this respect.

Q. May I ask why it was different in this respect than in others?

A. Well, sir, "this respect," when I use that term, means to me what I took it to mean to you, the fact that he had changed his testimony on a subsequent hearing. That is not unusual, because a number of other witnesses have done it. I can think of another witness who did it. Mary Knowles did it. She appeared before us three times. Her testimony was different each time.

Q. Now, hadn't the committee examined all these fourteen, plus the brother, in executive session?

A. Yes, sir.

Q. How did you decide which witnesses from the executive session should be called in the open session?

[fol. 220] A. That decision was made on the basis of what we thought would give the committee evidence or might give the committee evidence that would be useful in its investigation.

Q. Who made the decision?

A. I made the recommendation with regard to which witnesses should be called and which should be dropped.

Q. And who made the decision, if you made the recommendation?

A. The decision was made by the chairman, sir, in approving my recommendation.

Q. He had not been at the executive session, though, had he?

A. No, sir, he had not.

Q. So, in effect, he approved all your recommendations?

A. I would like to have an instruction, Your Honor. There was one recommendation I made which the chairman did not approve. I would consider it the confidential business of the subcommittee.

The Court: I don't think that would make any difference, if he made one he didn't approve. I don't think that is material to this case.

Mr. Rauh: I don't want the name, if Your Honor please. I don't want to hurt someone unnecessarily, so I am not [fol. 221] asking the name of someone.

By Mr. Rauh:

Q. What I would like to ask is, is this a person you wanted to call that the chairman didn't want called?

A. No, it is the other way around. It is a witness who was in executive session, and I advised that the witness not be called in public session. The chairman felt that his testimony was of importance and that he should be called.

Q. Isn't it a fact that in executive session you had largely people who wouldn't have reflected on the Times other than those you called?

A. Would you rephrase the question, sir? I have a little trouble.

Q. Isn't it a fact that the people you had in executive session which you did not call in public session would not have reflected on the New York Times had they been called?

A. Yes, sir, I think that is a fair statement. There are also people who in the opinion of the committee did not have information of value to the committee's investigation.

Q. Isn't it a fact that you had another case of mistaken identity in front of the executive session?

A. Will you refresh my recollection, Mr. Rauh?

Q. Yes. Isn't it a fact that John Briggs told you in executive session that he was a card-carrying Republican? [fol. 222] A. I don't see that is a case of mistaken identity, sir.

Q. Would you ordinarily call in front of the Senate Internal Security people who have been card-carrying Republicans as distinguishes from someone mixed up in the communist movement?

A. Mr. Rauh, the Republican Party and the Democratic Party and all other bona fide political parties have no immunity from communist infiltration. We have called before the committee communists who were Republicans, communists who were Democrats and communists who did not profess either of those political beliefs.

Q. Isn't it a fact there wasn't one piece of evidence that Mr. Briggs had been mixed up in any way, shape or form with anything communist?

A. No, sir.

Mr. Hitz: I object. Excuse me. Give me an opportunity to object from here on. It is irrelevant and immaterial.

The Court: The objection is sustained.

By Mr. Rauh:

Q. Did the committee call the past and present New York Times employees before it in these executive and open sessions because it believed there was a high percentage of ex-communists on the Times?

[fol. 223] A. No, sir.

Q. It did not believe there was a high percentage?

A. That is not what I said, Mr. Rauh, and you know it.

Q. I will repeat the question. Did the committee call the past and present New York Times employees before it in these executive and open sessions because it believed there was a high percentage of ex-communists on the Times?

A. No. The committee called these people before it because it had information that the persons whom it called were in a position to give the committee information about the matters it was investigating.

Q. How many present employees of the Times were shown to have been connected at any time in the past with the communist movement?

A. I have never made such a tabulation, sir.

Q. I would be glad to let you have this chart again in order that you can make that tabulation.

A. I can't make that tabulation from this chart, sir.

Q. I hand you Government Exhibit 7 and ask if that will help you make the statement?

A. No, sir, it will not. If you want to limit your question to the testimony of the witnesses that are in this document which is in evidence here, and if you want me to [fol. 224] go through it to find out how many of those witnesses testified to communist connections, I will be glad to do it for you.

The Court: Just a moment.

Some of you gentlemen in the room who are attorneys or parties in the case of Katz v. Kaiser Motors: we had expected to start trial of that case this morning, but from the looks of things, I imagine, gentlemen, that we might just as well excuse you until the morning, because I can't tell at this time whether we will reach your case. It is the next case on call, but I doubt seriously whether it would be reached today. There is nothing we can do about that.

(Question read by reporter as follows:

"Question: How many present employees of the Times were shown to have been connected at any time in the past with the communist movement?")

By Mr. Rauh:

Q. Can you answer the question the reporter has read?
A. No, sir.

Mr. Hitz: I object to the question. It is irrelevant and immaterial. I withdraw my objection, since he has already answered it.

The Court: The objection will be sustained.

By Mr. Rauh:

[fol. 225] Q. Did your committee make an investigation of communists on any other morning newspaper in New York?

A. The committee has not made an investigation of communists on any morning newspaper in New York as such, sir.

Q. What was the committee doing, if I might ask, when it called thirty out of thirty-eight in executive session and fourteen plus a brother out of eighteen in public session?

A. The committee was attempting to get information from persons whom it had reason to believe had information about communist activity in New York City and, more specifically, about communist activity and infiltration of mass communications in New York City.

Q. And did the committee make a similar effort with respect to any other morning newspaper in the New York area?

A. Mr. Rauh, this effort was not made with respect to any morning newspaper. If you mean by your question to inquire whether a like number of employees of other morning newspapers in New York were called in this particular series of hearings, the answer is no.

Q. Did the committee make any effort to find the ex-communists or communists on the other morning newspapers in New York City?

A. The committee did not make an effort to find the communists or ex-communists on any morning newspaper or any other newspaper. The committee did call before it [fol. 226] communists or ex-communists, in some cases other persons, believed by the committee to have information concerning the communist conspiracy who worked on other newspapers, and some who had worked on no newspapers.

Q. How would you compare the percentage of ex-communists on the New York Times with that on the other morning newspapers?

Mr. Hitz: I object.

The Court: The objection is sustained.

By Mr. Rauh:

Q. Isn't it a fact, Mr. Sourwine, that a far smaller percentage relating to the New York Times were shown to be communists or ex-communists than the percentage of ex-communists on the staff of the subcommittee?

Mr. Hitz: I object.

The Court: The objection is sustained.

By Mr. Rauh:

Q. Mr. Sourwine, I would like to show you Exhibit 7 again, Government's Exhibit 7.

A. That is the document entitled "Part 17?"

Q. Yes, it is. And I refer you to the testimony of Robert Shelton and ask you to read, if you would be so kind, the marked passage from the bottom of 1721 to the top and through the marked part of 1722.

A. In other words, let me be sure, you want me to read

[fol. 227] from here, where you put a pencil mark, down to here?

Q. Yes, I do.

A. Surely.

(Quoting):

"Mr. Sourwine. Did you ever write obituaries?

"Mr. Shelton. Write obituaries?

"Mr. Sourwine. Yes, sir.

"Mr. Shelton. That is not my job, sir.

"Mr. Sourwine. Did you ever write obituaries?

"Mr. Shelton. I may at one time have rewritten an obituary, but my job is that of a copy editor.

"Mr. Sourwine. Did you write the obituary for Richard H. Krebs, Jan Valtin?

"Mr. Shelton. I do not write obituaries. The answer to that is 'No,' sir.

"Mr. Sourwine. Right.

"Mr. Shelton. I am raising the question since this is not a question of the investigation of the press, why you are asking why I have written—

"Mr. Sourwine. Are you, sir, a member of the Communist Party, U. S. A.?"

[fol. 228] Q. Now, Mr. Sourwine, what was the pertinence of the question concerning the obituary on Richard Kreb, Jan Valtin?

A. The committee was endeavoring—I think this will answer your question—

Mr. Hitz: Excuse me just a moment. I think I will object to that as irrelevant and immaterial. It is not one of the questions in the counts.

The Court: Yes, it is no charge that the witness was charged with contempt for failing to answer. I am going to sustain the objection.

By Mr. Rauh:

Q. Did the committee have a copy of the obituary at the time it asked the question?

Mr. Hitz: I object.
The Court: Sustained.

By Mr. Rauh:

Q. Is this the obituary?
A. This is a photostat of Page 27 of the New York Times for Wednesday, January 3, 1951, and in Column 3 there is a headline: "Jan Valtin wrote 'Out of the Night,' former communist spy who had worked with the Nazis—

Mr. Hitz: Mr. Sourwine, please don't read that. It wouldn't even be offered in evidence.
Mr. Rauh: I didn't ask you to read it. I only asked you [fol. 229] to state whether that was the obituary you were referring to, and I am trying to do this painlessly, sir, too. I recognize that you have ruled the line objectionable. I have to perfect the record. I am trying to do it as painlessly as I can.
The Court: Has the witness answered the question?
Mr. Rauh: No, sir. The question is: Is that the obituary to which you referred?
Mr. Hitz: I do object to that.
The Court: Do you object?
Mr. Hitz: I do object, sir.
The Court: The objection is sustained.
Mr. Rauh: I would like to offer this as an offer of proof.
The Court: The record will show that the instrument—marked what?
The Clerk: It hasn't been marked, Your Honor.
Mr. Rauh: I will have it marked as Defendant Exhibit for identification No. 4.

(Defendant's Exhibit 4 was marked for identification.)

Mr. Hitz: Does it bear a date so we can identify it?
Mr. Rauh: Yes.
Mr. Hitz: What is the date?
[fol. 230] Mr. Rauh: Defendant's Exhibit No. 4 is a photostat copy of the New York Times for Wednesday, January 3, 1951.

The Court: The record will show that that was offered, counsel, and objected to as irrelevant and immaterial, and the objection was sustained.

By Mr. Rauh:

Q. Was this the only occasion in these hearings where you questioned pieces in the New York Times?

Mr. Hitz: I am sorry, questioned pieces?

Mr. Rauh: Yes.

Mr. Hitz: I object to the question as being not understandable.

Mr. Rauh: Well, I will restate the question.

By Mr. Rauh:

Q. Was this the only occasion when you asked witnesses questions concerning articles and editorials in the New York Times?

Mr. Hitz: I object, Your Honor.

The Court: The objection is sustained.

Mr. Rauh: Will you kindly mark this, please?

(Defendant's Exhibit 5 was marked for identification.)

By Mr. Rauh:

Q. I show you Defendant's Exhibit for identification [fol. 231] No. 5 and ask you what it is?

A. It is a portion of a newspaper, probably the New York Daily News, Tuesday, December 27, 1955. It is a column set two columns wide, the "Capitol Stuff" column by John O'Donnell. The date on the column is Washington, December 26.

Q. Did you see that column at the time?

A. I believe I did.

Q. Did you talk to Mr. O'Donnell before it was written?

A. Undoubtedly, but I don't believe I talked to him immediately before it was written or about the material that is in that column. I talked with Mr. O'Donnell on the telephone numerous occasions over the year.

Q. Is it your testimony you never talked to Mr. O'Donnell on the question of the investigation that we are considering here?

A. I don't believe I did.

Q. You never talked to Mr. O'Donnell?

A. That is my recollection.

Mr. Hitz: Does that bear a date the 22nd or the 26th?

Mr. Rauh: The 27th.

(Defendant's Exhibit 6 was marked for identification.)

[fol. 232] By Mr. Rauh:

Q. I show you Defendant's Exhibit for identification No. 6 and ask you what it is?

A. It is a clipping from the New York Times, including the New York Times' masthead. The date is not shown. This is from the editorial page. Of course, the masthead is there. The editorial is entitled, "The Voice of a Free Press."

Q. Have you ever seen that before?

A. Yes, sir, I have seen and read this editorial.

Q. You commented upon it at the time of the hearing, did you not?

A. I don't remember.

Q. Didn't you say you were flattered to be mentioned by the editorial?

A. Oh, no, sir.

Mr. Hitz: Please don't answer until I have an opportunity. I do object to it.

The Court: The objection is sustained.

Mr. Rauh: We offer it in evidence.

Mr. Hitz: I object to it.

The Court: The objection to the offer is sustained.

Mr. Rauh: Will you please mark that as No. 7?

(Defendant's Exhibit 7 was marked for identification.)

[fol. 233] By Mr. Rauh:

Q. I show you Defendant's Exhibit No. 7 for identification and ask you what that is?

A. This is a committee print of a report of the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws to the Committee on the Judiciary, United States Senate, 84th Congress, entitled "Strategy and Tactics of World Communism," subdivision, "Significance of the Matusow Case."

Q. What is the date on the front cover of that publication, Mr. Sourwine?

A. April 6, 1955.

Q. And when was it released by the committee?

A. Oh, I think a good many months later.

Q. And when, exactly?

A. I am sorry, I don't remember the precise date.

Q. Isn't it a fact, Mr. Sourwine, it was released the week before these men were called on the stand, including the defendant?

A. About that time, yes, sir. You must understand, Mr. Rauh, if you don't already, that these reports carry the date in many instances, for instance, when the first copy is sent to the printer. There is a great deal that goes on between the time the first piece of copy is sent to the printer and the time the report as approved by the sub- [fol. 234] committee is issued. This is a subcommittee print that you have there.

Q. It is a regular practice, is it, that reports are dated nine months before they are issued?

A. Oh, no, it is not the regular practice at all. But a report, when it goes to the Government Printing Office, begins to carry that date, and it carries that date, unless and until somebody edits that date out. In this case it was not done, and that date speaks of the time when the first piece of copy on the report went to the printer for galley proofing.

Q. This document reflects on the New York Times, does it not?

A. That is a conclusion I would not care to draw, sir.

Q. Well, I would like to read you some of it and see if we can draw the conclusion. I refer to Page 28.

Mr. Hitz: I object to the reading of it, unless it is being offered in evidence or a portion of it is being offered in evidence.

OFFER IN EVIDENCE

Mr. Rauh: I will offer the whole document in evidence.

Mr. Hitz: Could I see the part you propose to read so I will know what to object to?

Mr. Rauh: It is 28 and 45, Mr. Hitz, the footnote on 28 and the quote about the New York Times on 45.

[fol. 235] Mr. Hitz: Is this part of a question asked of the witness?

Mr. Rauh: Well, there is an offer of the document before His Honor.

The Court: The whole document?

Mr. Rauh: I was offering the document, yes, sir.

The Court: The whole document pertains to the same thing?

Mr. Rauh: No, sir, but I think the circumstances of the document are significant.

The Court: Very well, there is no objection, I will let it go in.

(Defendant's Exhibit 7 for identification was received in evidence.)

By Mr. Rauh:

Q. Now, the Footnote 8 on Page 28, I will read you the footnote, and then I would like to ask you some questions, unless you would prefer to read it yourself.

The Court: Do you have two copies of it?

Mr. Rauh: No, sir, I am sorry. This was the last copy at the Internal Security Subcommittee; in fact, I am going to have to get a photostat of it or something.

By Mr. Rauh:

Q. Mr. Sourwine, which is your preference, that you read it or that I read it to you?

[fol. 236] A. I have no preference, Mr. Rauh.

Q. Well, then, I will read it to you. (Quoting):

"In his appearance before the subcommittee in Salt Lake City, Matusow was asked if he had attended Communist Party schools in which instructions were given with respect to infiltration of labor unions as such. He answered in the affirmative and gave the following statement to illuminate his reply.

"'Mr. Matusow. For instance, the American Newspaper Guild, of which I am a member now, might be an illustration. In 1950, I attended Communist Party meetings, caucuses, in the Newspaper Guild in New York. It has a large membership and is not a communist-dominated union, but in New York City today, there are approximately five hundred dues-paying communists working in the newspaper industry. The New York Times has well over one hundred dues-paying [fol. 237] members. Time, Inc., has seventy-six Communist Party members working in editorial and research, and just a few months ago the communist caucus regained control of that unit in the Newspaper Guild. They go into a union meeting and have the old adage, 'Come early and stay late; plant a few communists on the rules committee to use Roberts' Rules of Order and Parliamentary Procedure in order to stop any resolution that a legitimate union member might want to pass that the communists don't agree with, and continue to agitate along those lines.'

That is the completion of the quote from Mr. Matusow. Now, going on with the report:

"It developed during the course of the recent hearings that Matusow had given a statement of 'clarification,'"

and the next four lines are underlined by the report,

"not recantation or retraction, to the New York Times on September 28, 1953. This clarification was in an affidavit sworn by him."

[fol. 238] Pertinent paragraphs from the affidavit follow:

First paragraph numbered 3:

"The public statements by me which were the subject of discussion were statements to the effect that as a former member of the Communist Party and an undercover observer within the Communist Party for the Federal Bureau of Investigation, which activities took place between the fall of 1946 and February, 1951, it was my belief and understanding that there were some 120 Communist Party members among the employees of the New York Times. I made this statement in testimony at a hearing of the subcommittee of the United States Senate Committee on Internal Security at Salt Lake City, Utah, on October 8, 1952. I made this statement also at numerous times in speeches during the latter half of 1952 at political meetings, generally under Republican Party auspices, in connection with the national political campaign, at various places in [fol. 239] the States of Washington, Nevada, Utah, Montana, Idaho, Wisconsin and Ohio. In most, if not all, cases the statement was accompanied by the qualification I did not believe the New York Times to be a pro-communist newspaper, nor its editorial content to be pro-communist, but that I was simply citing it among other publications and information media, and the United States Government itself, as an example of the dangers of communist infiltration.

"4. While these statements were intended to serve a constructive purpose in the cause of anti-communism, extended reflection has convinced me that their generalized nature was such as to cause incorrect inferences and reflect unfairly on the Times and therefore defeat their purpose. Therefore, I wish to explain the basis of these statements."

Now, Mr. Sourwine, you are familiar with this report?

A. Yes, sir.

Q. And you said that the affidavit which Matusow gave [fol. 240] the Times was not a recantation or retraction?

A. I didn't say that.

Q. The report says that.

A. The report says that.

Q. And isn't it a fact that the affidavit also says that there were no more than six communists on the Times and that that is left out from this statement?

A. No, sir.

Mr. Hitz: I object.

The Court: I think the witness has already answered the question.

Mr. Hitz: I still would like my objection to stand.

The Court: The objection would have been sustained, and if you move to strike—

Mr. Hitz: I move to strike his answer.

The Court: —it will be stricken.

By Mr. Rauh:

Q. Isn't it a fact, Mr. Sourwine, that this document was put out just before the hearings to further the attack on the New York Times?

A. It is not a fact. There was no attack on the New York Times.

Mr. Rauh: In view of the fact that Mr. Sourwine has answered that question, I would now like to go back to my [fol. 241] first question, which is: Isn't it a fact that this same affidavit that was quoted here contains the statement that there were only six communists on the New York Times and that that favorable statement of the Times was deliberately left out?

Mr. Hitz: I am not going to object this time. I think that helps us quite a bit.

The Witness: I don't remember that the affidavit said that, sir.

By Mr. Rauh:

Q. Maybe I can refresh your recollection.

Mr. Rauh: Will you mark this for identification, please?

(Defendant's Exhibit 8 was marked for identification.)

By Mr. Rauh:

Q. I show you Defendant's Exhibit for identification No. 8, which has been referred to previously but not marked, and ask you to read, not into the record, but to yourself, the parts of the document that I have marked, and ask you if this in any way refreshes your recollection about the question I asked you.

A. No, sir, that doesn't refresh my recollection. Everything in there I recalled quite clearly at the time you asked the question.

[fol. 242]

OFFER IN EVIDENCE AND OBJECTION THERETO

Mr. Rauh: We offer Exhibit No. 8.

Mr. Hitz: We object to it.

The Court: The objection is sustained.

Mr. Hitz: Can you give me the date?

Mr. Rauh: Oh, sure. The 6th of January, 1956.

By Mr. Rauh:

Q. Is it your statement that the Matusow affidavit quoted there does not contain the statement that there were only six communists on the Times?

A. That is correct, that is my statement.

Q. Your statement is that it does not contain it?

A. It does not contain the statement that there were only six communists on the New York Times.

Mr. Rauh: May we have just a short recess at this time? I was going to look at my notes, and I would request it to save time.

The Court: At this time we will take a recess for ten minutes.

(Whereupon, a short recess was taken.)

By Mr. Rauh:

Q. Mr. Sourwine, I refer to Defendant's Exhibit 7, the report on the significance of the Matusow case, and ask you if you were responsible for its preparation?

A. I had general supervision over the first draft of that report, sir, and I worked on subsequent drafts.

[fol. 243] Q. And you have read the affidavit of Mr. Matusow?

A. Yes, sir.

Q. Do you know whether that affidavit has ever been printed?

A. No, I don't. The committee printed a part of it. The New York Times printed excerpts from it. I don't know that the whole affidavit has ever been printed.

Q. I would like to read you this sentence and ask you if it is incorrect. This is from Defendant's Exhibit 8 for identification:

> "In 1953, however, Matusow gave an affidavit to the Times in which he said he knew of no more than six communists who have worked on the Times when he, Matusow, was a member of the Communist Party."

Was a statement to that general effect in the affidavit?

A. As I remember it, the affidavit did state that Matusow personally knew of no more than six communists. It went on to explain why and on what basis he had given his estimate of in excess of a hundred.

Q. And why was this not included in the footnote that I read you, where you put forth some of what you refer to as pertinent paragraphs of the affidavit?

A. I am not sure that I can answer that question ade-
[fol. 244] quately. I can only tell you what I know of why it wasn't in there. The person who suggested that that go in did not feel, and I may say I concurred with him, that it was necessary to do more than cover the point on recantation, which is the reason that it was footnoted in the report.

Q. Do you think that is a fair presentation, to leave out the significant part of the Matusow affidavit, namely, that he knew of no more than six communists?

A. I don't think that report is unfair, sir.

Q. You repeated in the report the 126 communists charged by Matusow against the Times a second time, did you not?

A. I am not sure that I understand you, sir. You say I repeated—

The Court: Isn't the exhibit in evidence?

Mr. Rauh: Yes, sir.

The Court: If the exhibit is in evidence, the Court can refer to it and see what it says, without asking the witness over and over what is in the report.

Mr. Rauh: If Your Honor please, before we excuse this witness, in the light of the memorandum which we submitted this morning, we would like to repeat our request for the "anonymous tip" letter which was received by the Senate Internal Security Subcommittee and which seems to be available to it.

[fol. 245] The Court: The request will again be denied at this time.

Mr. Rauh: I have no further questions.

Redirect examination.

By Mr. Hitz:

Q. Mr. Sourwine, did the subcommittee ever report to the full committee and did the full committee ever report to the Senate the result of or a summary of these particular hearings? I am speaking now of the hearings particularly as contained in Part 17, these various individuals concerning whom you questioned.

A. No, sir, I don't believe that has been done.

Q. As a matter of fact, has that investigation been completed to a point where it is in shape to be reported on?

A. The committee does not consider that it has been completed, sir. I know it is still going on actively.

Q. That is, the communist activity in New York as it appears in the subhead, "Strategy and Tactics of World Communism?"

A. That is correct, yes, sir.

Q. Now I think you have testified that the rule, that is, Rule No. 1, as contained in Defendant's Exhibit No. 2, which rule states that "No major investigation shall be undertaken without a majority vote of the subcommittee," or words to that effect, was passed in early 1955; is that correct, sir?

[fol. 246] A. Yes, sir, February 7.

Q. Now, the investigation that concerned itself with Part 3 of Resolution 366, generally relating to communist activities as distinguished from the operation, administration and effectiveness of the Internal Security Acts referred to in Parts 1 and 2, was that investigation commenced?

Mr. Rauh: Objection on the ground that, as far as I know, there is no testimony that this investigation was commenced under Part 3 of the resolution. This is the first I have heard of the breakup of the resolution, and I object to the form of the question as assuming things that are not in evidence.

Mr. Hitz: I will reframe the question.

By Mr. Hitz:

Q. What part of the three parts of Resolution 366 was strategy and tactics of world communism investigation undertaken, sir?

A. Under the third part, sir.

Q. Was the investigation which ultimately became entitled "Strategy and Tactics of World Communism" undertaken before or after the passage of the rule that I have referred to?

A. Before, sir. It was undertaken as soon as the committee began its activity. It was one of the basic instructions to the subcommittee from the Senate.

[fol. 247] Q. Now, you testified on cross examination yesterday, in answer to questions directed to that subject, about your reaction to the testimony of Mr. Shelton when he appeared in executive session, and in the course of so testifying, you referred to his refusal to answer the question concerning Communist Party membership on his part.

A. Yes, sir.

Q. And with reference to that, I believe you stated that that was one of the principal matters that caused you to believe that you did have the right man after all, that is, the man that you were seeking as an employee of the New York Times, having been so identified by your informant. My question now is, did you have any reaction that you can now recall on that subject when he stated that he would

not tell you whether in his opinion the Communist Party was a political party in the usual sense? Did you have a reaction when he took that position with respect to that question?

A. I did.

Q. What was that reaction?

A. Well, that greatly strengthened my belief that we had the right man, Mr. Hitz, because that position is only taken by someone who is at least friendly towards and sympathetic with the communist cause.

Q. Has that been your experience as counsel for this committee, having these duties over a period of years?

[fol. 248] A. Yes, sir.

Q. Mr. Sourwine, can you give us the date when Winston Burdette testified before your subcommittee, approximately?

A. Not from memory, sir.

Q. If I show you a copy of committee hearings entitled "Strategy and Tactics of World Communism," subhead, "Recruiting for Espionage," would you be able to refresh your recollection on the date of Burdette's testimony?

A. Yes, sir, I would.

The date of Mr. Burdette's testimony, the beginning of his testimony, was Wednesday, June 29, 1955.

Q. Did the person who wrote the letter, who mentioned that there was a man named Shelton employed at the Times, by the New York Times, who might be able to give you information concerning communist activities at that place—did he write that letter before or after Mr. Burdette gave the testimony?

A. After.

Q. Did the person who wrote that letter mention other persons than Mr. Shelton in the same connection?

A. Yes, sir.

Q. Can you tell us how many others he named?

A. No, I am sorry, I can't. I don't recall the precise number.

Q. Can you give an approximation, such as there were [fol. 249] two or three, or maybe five or ten or twenty?

A. I think there were probably fifteen or eighteen persons named in that letter, different information of different grades about the different persons.

Q. The testimony of Mr. Burdette was in open session, was it, sir?

A. He testified in open session on the date I named.

Q. Do you see here today the person who testified in executive session on December 7th and in open session on January 6, 1956?

A. Mr. Shelton is here, sir, yes. He is sitting over there at the counsel table.

Mr. Hitz: No further questions, Your Honor, thank you.

Recross examination.

By Mr. Rauh:

Q. Mr. Sourwine, did I understand you to say this letter to which the Government has again adverted contained fifteen or eighteen names?

A. That is my present memory, so I wouldn't be precisely sure about the number of names.

Q. And how many had the first names on them?

A. I am sorry, I wouldn't be able to tell you that without examining the letter.

Q. When did you last see the letter?

[fol. 250] A. It has been over a year, sir.

Q. Yesterday, when I asked you to tell me everything about that letter you could, you didn't mention fifteen or eighteen people. Now will you tell us everything you can remember about that letter, the contents of that letter?

A. Not unless the Court orders me, sir, because the letter, in my judgment, is confidential to the Internal Security Subcommittee. I don't believe I have the right to reveal anything about that letter that is not pertinent to this case and directly bearing on the subject matter I am here to testify about.

Mr. Rauh: If Your Honor please, the one point that there can be no argument about on the cases cited in that memorandum is that when the Government comes into court, if there is something material, its confidentiality is not a ground for withholding it. As a matter of fact, I understand the United States Attorney to agree with that position.

Here we have a case of a man trying to tell part of what is in a document and not being willing to show the document, and now suggesting he wouldn't tell what the rest of the document says. I am trying to prove from this document that they didn't have a lead on this Shelton. Now we get little dribblets come out about this document seen by this witness more than a year ago. It seems to me we are more and more showing the need for the document itself. I can't understand any ground the wit-
[fol. 251] ness has a right on which not to tell us the contents of that document.

Mr. Hitz: I would like to object to the question as being not material and, furthermore, being beyond the scope of proper recross examination of this witness.

Mr. Rauh: The United States Attorney brought up this letter and put in the fact there were fifteen or eighteen names.

The Court: I think it is within the scope, all right, counsel, of recross examination. I still have some misgivings about whether we can require the letter to be brought here or not. So far as any material in the letter given by an informant that doesn't pertain to this particular action, certainly, I would sustain the objection that that part of the letter isn't material. As far as any other names that were mentioned in the letter, the names of the people, this Court is not going to require those names to be brought here. I haven't fully made up my mind yet with respect to some parts of the letter. Of course, counsel understands, even if the Court directs it, it is a matter then for the Senate to determine whether they will permit that document.

Mr. Rauh: In the event that they should not permit it, however, I assume in line with what happened in the Coplon and other cases, that it would be up to the Judge, then—

[fol. 252] The Court: As far as anything material in the letter is concerned, that will be true, whether it is confidential or isn't confidential.

Mr. Rauh: We would be entitled to an acquittal.

The Court: I agree with those authorities, there is no question about that, but for the moment at least, I am

still not going to require the letter to be brought, for the moment at least.

Mr. Rauh: The issue, as I understand it, here, sir, is that the Government has objected to my question, which was brought about by the fact that on redirect examination, they opened the letter and put in some more material.

The Court: I am not sustaining the objection on the ground that it is not proper recross. The Government did bring out the additional information from the witness that the letter contained a number of other names. The whole thing may be immaterial if the Government is correct in its contention that they may call a man from the street, even though they may have referred to the letter here. I am not convinced—I haven't seen any authorities to the effect that they still can't rely upon the fact that they can bring the man from the street, if that is the law, which it apparently seems to be from some of the cases, on the one question, which, of course, will be pertinent from the face of the question, and that is when the witness was asked whether he was a member of the Com-
[fol. 253] munist Party. In your memoranda, which I haven't had a chance to pursue very much, you seem to take the position that the Government, once having referred to the letter, can't go back and rely upon the man in the street doctrine, so to speak. I am not sure about that.

Mr. Rauh: May I say this, sir, on that point. I don't want to be in the position of arguing something you don't want me to, but on that particular point, if I may say this. We are not saying that they can't rely on the man in the street doctrine. But the Government has us in this dilemma: we are, I feel, somewhat on the horns of this dilemma, which they have put to us. They say they can haul the man off the street, and I am perfectly willing to litigate that all the way. They also say, but we are also going to prove that this isn't the man on the street case, and then they wouldn't give us the information which we are entitled to to disprove that this isn't the man on the street case. They want two strings to their bow, but they don't want to let us answer the second string.

The Court: Maybe they can rely on either string of the bow.

Mr. Rauh: I think they can. I am perfectly willing that they rely on both strings, but I just want a chance to prove that they do have the man on the street case and not the probable cause case. That is all I am asking for. They [fol. 254] started this, I didn't. They asked this witness what information he had, and he gave the contents of a letter without indicating it was the contents of the letter.

The Court: For the present, the Court has ruled and you may proceed. You have further recross.

Mr. Rauh: I take it that you sustain the objection to my question further going into the contents of this letter, sir?

The Court: Yes.

Mr. Rauh: May I please have Government's Exhibit 6?

By Mr. Rauh:

Q. Will you show me, please, or read me the question and answer you were referring to on recross that caused you to say you knew this gave you suspicion that the defendant was friendly or sympathetic toward the communist cause other than the plea of the First Amendment?

The Court: You refer to the question that was asked on redirect.

Mr. Rauh: Redirect, yes, sir.

The Witness: (Quoting):

"Mr. Sourwine. Do you, sir, consider the Communist Party to be just another political party, just like the Republican Party, in the connotation in which you mentioned it?"

[fol. 255] By Mr. Rauh:

Q. And the answer?

A. (Quoting):

"Mr. Shelton. I wish to stand on the statement which I have made."

Q. And it was this refusal to say that he didn't consider, didn't negative your question, that caused you to

say that you were suspicious that he was friendly or sympathetic to the communist cause?

A. His refusal to answer that question, yes, sir.

Q. And that people who take this position, you found, are, did you not testify to on redirect, sympathetic or friendly to the communist cause?

A. Yes, sir. I think every loyal American who is not sympathetic to the communist cause by now, if he is intelligent, realizes that the Communist Party is not a true political party, but is a part of an international conspiracy. The Supreme Court has found that, the Congress has found that, and I think anyone who knows anything about the subject understands that now.

Q. Do you know where the statement, "Communists, we may assume, carry on legitimate political activities," comes from?

A. No, sir.

Q. Would it surprise you if I told you that it came [fol. 256] from Communications Association v. Dowds, a decision of the United States Supreme Court?

A. Not at all.

Q. You wouldn't consider that a pro-communist remark?

A. I would not, no, sir. There is a great deal of difference between that communists as individuals do and what the Communist Party does and order its members to do.

Q. Do you think that the Communist Party carries on legitimate political activities as well as other activities?

A. As a party, no, sir, I do not. I think the Communist Party has for some years attempted to masquerade as a legitimate political party. I don't think it ever was.

Q. You are making the distinction, then, between communists and the Communist Party?

A. I think you made it, Mr. Rauh.

Q. I asked you whether you agreed with this decision or the statement of the Supreme Court, "Communists, we may assume, carry on legitimate political activities."

A. Yes, I think that is true. I think they do. Communists have run for office in the United States, which is every man's right. When a communist runs for office, he is carrying on a legitimate political activity; whether he

is carrying it on for communist purposes is another question.

Q. What was so terrible about what Mr. Shelton did? That is what I didn't understand.

[fol. 257] A. I don't think I said it was terrible. I said that, to me, it identified him in my mind as a person who was friendly with or sympathetic to the communist cause.

Q. This statement from the Supreme Court doesn't identify them in your mind the same way?

A. No, it does not. I concede the distinction between the two statements, those of the witness and the statement of the Supreme Court.

Q. Now, you say this investigation is still going on actively?

A. Yes, sir.

Q. Now, it was a year ago you had fourteen plus a brother out of eighteen New York Times people before the committee in public session. What has been done since then?

A. Are you asking me to tell you everything the Internal Security Subcommittee has done?

Q. On newspapers in New York, yes.

A. Mr. Rauh, I don't believe I have the right to give you information about the confidential activities of the committee not bearing on the case of the man here on trial. I would do so if the Court orders me to; otherwise, I feel I must decline.

The Court: I will not require you to divulge any confidential information of the committee.

By Mr. Rauh:

[fol. 258] Q. Had you anybody in executive session in the committee from the New York papers since this time?

Mr. Hitz: I object: irrelevant and immaterial.

Mr. Rauh: I move that the previous testimony of this witness on redirect, that the inquiry was still going on actively, be stricken from the record on the ground that I have not been allowed to probe into the truth of that statement.

The Court: The motion will be overruled.

Mr. Rauh: I have no further questions.

Mr. Hitz: Your Honor, Mr. Rauh asked one question concerning the letter of the informant, which was: Please relate everything that was contained in the letter. I made an objection on two grounds: one, that it was beyond the scope of the recross and, second, that it was immaterial. Your Honor, as I understand it, sustained the objection on the ground that it was immaterial. Then Mr. Rauh asked Your Honor if he was precluded from asking all other questions concerning that letter, and I believe Your Honor informed him that that was the effect of the ruling. However, I would like to state to the Court that perhaps it might be better, in my opinion, if Mr. Rauh has any more questions on that subject, to ask them, so that we may determine if any of them might fall within the area concerning the testimony of Mr. Sourwine which was admitted here on behalf [fol. 259] of the Government. Otherwise, Mr. Rauh will, if there should be a conviction in this case, have a very considerable length of time to see if he could conjure up one material question and he will then, of course, be able to say that he was precluded from any and all questions from now on.

The Court: The Court hasn't fully yet determined or fully made up its mind whether we will not ask the Senate to bring the letter down. If the Court finally determines we will not, then, of course, I will permit Mr. Rauh to ask such other questions as the Court may think is material upon the things that are material to this case.

Mr. Hitz: That will cover my thought on the matter, thank you.

The Court: Are there any further questions of this witness?

Mr. Hitz: No further questions by the Government.

Mr. Rauh: No further questions, Your Honor.

The Court: You may stand aside, Mr. Sourwine.

I take it you had better stay around, I mean, for a while at least. Will there be any further questions, Mr. Rauh? Will you have any further questions of Mr. Sourwine?

Mr. Rauh: Only in the event that Mr. Hitz' suggestions would bring about further questions. I don't have any

others in connection with the suggestion just made by the [fol. 260] United States Attorney.

The Court: For the moment, maybe you had better stay a little while, Mr. Sourwine.

GOVERNMENT RESTS

Mr. Hitz: We have no further testimony, and we rest.

Mr. Rauh: I have a motion for a judgment of acquittal. Do you care to hear me now?

The Court: I will.

Mr. Hitz: I wonder if I could be heard on that. If this is a motion for an acquittal at the end of the Government's case and before the defense proceeds with its defense case, I would like to suggest to the Court that since Mr. Rauh has offered a number of exhibits in evidence, that he is precluded from making such a motion, and he must make it then only at the conclusion of the entire case, which means at the conclusion of his case. That is a rule that appeals to Your Honor's discretion, but it is a rule frequently followed, as I understand it, in this jurisdiction and elsewhere.

The Court: Yes.

Mr. Hitz: It is a technical matter, but it just means Mr. Rauh will only be heard once instead of twice. I think that is a good plan.

The Court: Well, I will let him make the motion if he wants to now. I will not permit any argument of it now, because I don't think it is necessary.

[fol. 261] Mr. Rauh: I was going to argue it, but I will accede to Your Honor's wishes and simply make the motion. I was planning to argue it, but if Your Honor prefers to have argument at a later stage—

The Court: You make your motion. I will pass on it.

DEFENDANT'S MOTION FOR A JUDGMENT OF ACQUITTAL AND OVERRULING THEREOF

Mr. Rauh: The defendant respectfully moves for a judgment of acquittal on the following grounds:

1. The Government has failed to prove what, if any, was the question under inquiry by the committee when it called the defendant.

2. The Government has failed to prove that the questions asked the defendant were pertinent to any question under inquiry by the committee.

3. The Government has failed to prove that the question under inquiry by the committee when it called defendant was within the authority alleged in the indictment.

4. The Government has failed to prove that on January 6, 1956, the subcommittee in question was conducting hearings pursuant to the specific authority alleged in the indictment or to any grant of power from the United States Senate.

5. The Government has failed to prove that the questioning of defendant and the questions which form the basis of the indictment had any valid legislative purpose. The evi- [fol. 262] dence indicates that, in fact, the committee had no valid legislative purpose in interrogating defendant but, rather, sought to expose him and others to contempt and ridicule, in violation of the constitutional doctrine of the separation of powers which places limitations upon the exercise of legislative power.

6. The questioning of defendant and the questions which form the basis of the indictment violated the rights of defendant and others to the freedom of speech, assembly and petition guaranteed by the First Amendment.

7. The questioning of defendant and the questions which form the basis of the indictment violated the freedom of the press guaranteed by the First Amendment, and this particularly so in view of the purpose of the committee as a reprisal against the New York Times.

8. At the time the defendant was questioned, the committee had no information that he was or had been a communist or a member of a communist-front organization or any information reflecting upon him. The information in the possession of the committee reflected upon Willard Shelton, a well-known and respected newspaperman, rather than on the defendant, who was called entirely by accident. Under these circumstances, the proceedings violated the defendant's right of privacy under the First Amendment and

were not with any legislative power granted to or exercise-able by the committee.

[fol. 263] 9. Defendant's rights under the Fourth and Fifth Amendments were violated by arbitrary and discriminatory subpoenaing of defendant as a witness before the committee when there was no probable cause to believe the defendant had engaged in or had information about communism, subversion, espionage or other matters within the alleged jurisdiction of the committee. We strongly urge the rejection of the off-the-street doctrine proposed by the Government in this case.

10. 2 U.S.C. 192, that is, the contempt statute, read together with the alleged authorization of the subcommittee, is so vague and indefinite as to deprive defendant of the due process of law guaranteed by the Fifth Amendment.

Those are our ten grounds for the judgment of acquittal. I am prepared to argue it now or later.

The Court: The motion will be overruled.

Mr. Rauh: Your Honor, except for the letter, we have no evidence to present. We feel that the evidence in this case warrants an acquittal as it stands, and we do not have anything further to present.

The Court: The Court will take a recess at this time until 1:30. I want to look at some authorities myself on this question of the letter. I take it that, as I understand it, you have no testimony other than the letter itself, and, of course, you have no rebuttal testimony?

Mr. Hitz: We do not.

[fol. 264] The Court: Very well. We will stand recessed until 1:30.

(Whereupon, at 11:30 a.m., a recess was taken.)

AFTERNOON SESSION

(2:20 p.m.)

The Court: The question immediately before the Court is whether the Court will require the document which has been referred to as a letter which was in the possession of Congress and of the committee prior to the time it went to

New York for the purpose of having an executive session.

The defendant, at the outset, subpoenaed all of the records of the senatorial subcommittee which pertained to and included the name of the defendant, and this subpoena was not executed by the custodian of the records. Due to the nature of the request, the Court referring to the subpoena as a Mother Hubbard subpoena, and thus calling for a mere fishing expedition, the Court declined to issue the order requiring the execution of the subpoena. The defendant now seeks to obtain access to one letter, that is, the letter the Court referred to, in the files of the subcommittee, which letter was the source of initial information connecting this defendant with the subject under inquiry by the subcommittee, so says the witness Mr. Sourwine.

The Government resists the defendant's request for the [fol. 265] letter, urging that it contains confidential information, including the names of additional persons known or suspected to be active in the communist movement and also the pseudonym of an informant of the subcommittee who was known to properly identify the person who gave the information. The defendant contends that the confidential letter is material and relevant to this case because it is the only evidence which establishes the probable cause of the subcommittee in calling the defendant to testify before it on the occasion which gave rise to this indictment. The defendant also seeks the letter to inspect it and, if suitable for the purpose, to use it to impeach the Government witness who testified concerning the facts which gave rise to the summons of this witness before the executive session of the subcommittee on December 7, prior to the date on which the defendant was recalled to testify in Washington, D. C.

Now the Court has given very careful consideration to the application and request of the defendant for production of the confidential letter. The authorities cited by counsel for the defendant, while helpful, we do not believe quite reach the problem presented in this case.

In the Court's analysis of the matter, the evidentiary value of the letter to the issue of probable cause, assuming, without deciding, so far as the purpose of this motion is

concerned, that probable cause is an element of the offense [fol. 266] charged against the defendant, is nil. This is true for the reason that while the letter might have been the sole basis for prompting the summoning of the defendant before the executive session of the subcommittee held in New York on December 7, 1955, the defendant does not stand here indicted for his refusal to answer any questions asked him on that date. The indictment stems from the defendant's refusal to testify before the subcommittee sitting in Washington, D. C., on the 6th of January, 1956.

Thus, even assuming, without deciding, I mean, so far as the purpose of this motion is concerned, that probable cause for the subcommittee to believe that a person called before it had pertinent information must exist to render the interrogation of the witness a lawful adjunct to a legitimate inquiry by the congressional committee, the Government's evidence, we think, does clearly show that probable cause did in fact exist for calling the defendant on January 6, 1956, without respect to the letter at all, and whatever the effect of this letter upon calling the defendant in December, 1955, seems to the Court will be merely cumulative in respect to the facts which the Court thinks, maybe, constitute probable cause. I am not deciding that probable cause is necessary for the purpose of this motion, but calling him in January, 1956.

Now, on the other question of the letter being necessary [fol. 267] for the proper, shall we say, impeachment of the Government witness, or at least for the purpose of testing his credibility, I think the courts in this jurisdiction have said that if possibly evidentiary value of a document in custody of one of the coordinate branches of the Government to the defense is clearly negligible—and I would enlarge upon that by saying merely cumulative—then, in its discretion, the court may say that the interest of the accused in the use of the writing as evidence is outweighed by public policy, such as that which favors protection from disclosure of the identity of an informer or even more so that which favors protection of information affecting national security.

DEFENDANT'S REQUEST FOR PRODUCTION OF LETTER OVERRULED

So for the reasons stated, the request of the defendant for the production of the letter will be overruled.

Now I will say to counsel representing the defendant that if you want to further cross examine Mr. Sourwine on matters that might be material so far as this defendant is concerned, not as to the names of everybody else in that letter or any information in it, if you want to test his memory further on that on cross examination, the Court will permit you to do so at this time.

Mr. Rauh: I believe the defense would like cross examination on the letter, and I hope that if I go beyond any restrictions that you have in mind, that you will forgive me. [fol. 268] The Court: The Government has counsel here, and the Court will rule, I think, as to the materiality and the relevancy of the questions and as to whether you are going beyond the scope which the Court thinks might be legitimate and pertinent cross examination.

Mr. Rauh: I only meant to say it was not deliberate, but this is a tough problem of a part of a situation.

The Court: I understand. You might not agree with Mr. Hitz on what was pertinent or relevant, but we will determine that as we go.

Thereupon JULIAN G. SOURWINE resumed the witness stand, and having previously been duly sworn, was examined and testified further as follows:

Further cross examination.

By Mr. Rauh:

Q. Mr. Sourwine, how many of the fifteen or eighteen names were called in executive session?

A. I am unable to state.

Q. When did you last see this letter?

A. Something over a year ago.

Q. When did you last talk to anybody about its contents?

A. I think that question calls for a full disclosure of the [fol. 269] fact that when I reported to my office at the noon

recess, I told Mr. Morris, who is now the chief counsel of the committee, what had been the subject matter of the discussion just prior to the recess, and in that way referred to the contents of the letter. I want to state, so there will be no misunderstanding about it, that I did not at that time discuss with him what the nature of the contents of the letter were, nor ask his recollection about the nature of any of the contents of that letter. I did tell him substantially what I had testified to with regard to that letter. And I might say I don't think he was happy about the fact that I had disclosed it.

The Court: I think his question, Mr. Sourwine, was when you last talked to someone about it, and I think the only answer you need give that question was you did talk today.

The Witness: Yes, sir.

By Mr. Rauh:

Q. And when was the last previous time before that, Mr. Sourwine?

A. It would have been prior to the public session on January 6, 1956.

Q. Do I understand your answer to be that you cannot remember how many of the fifteen to eighteen were called in executive session?

A. I not only cannot remember how many of them were [fol. 270] called, I cannot remember one of those names.

Q. How do you happen to remember the defendant's name out of that list if you cannot remember any other name out of fifteen or eighteen?

A. I remember, sir, the way in which the defendant's name first came to my attention. That has been the subject of inquiry at this trial. I do not have a photographic memory of the particular letter in which the defendant's name appeared. I know that there was such a letter. I know what its contents were, as I have outlined them in substance, with regard to this defendant here. That is all that I remember about the names which were in that letter, as I have testified here before. As I have testified here before, we received a number of other communications from the same informant. Some of them had been received prior to this

time and had been checked out and worked over, and I am unable to sort out from my memory at this time which name was in which letter.

Q. You only remember out of this letter the one name out of the fifteen or eighteen, and that is the defendant; is that correct?

A. I have no actual independent memory of this particular letter as a sheet of paper and what was on it. I have a very clear memory of the series of letters which were received from this informant and of the fact that in one of those letters was the information regarding Mr. Shelton, [fol. 271] with respect to which I have testified here in this trial.

Q. Well, how do you know when this letter was received if you have no independent memory of it?

A. I don't know the precise date when it was received, sir.

Q. I thought you testified yesterday it was received approximately a month before Mr. Shelton was called.

A. I believe I testified within the period from a month to ninety days before he was called, and that is about as close as I can place it.

Q. And what was the length of the span of time in which letters were received from this informant?

A. Over a period in excess of two years.

Q. Then how can you tell, if you have no independent memory of this letter, that it was not in a different part of the two-year period?

A. Because, Mr. Rauh, I know when the initiation of the preparation of a list of witnesses for the New York hearings began, and I know that this man's name, Mr. Shelton's name, got into that list before the arrival of a letter which contained it.

Q. Did anybody else's name get into that list that was on the letter from the informant?

A. I think that is possible, sir, but I can't state with positiveness.

[fol. 272] Q. Was this a list of names on the Times or a list of names of people in general?

A. Neither.

Q. Well, tell me what it was a list of names about; you describe it.

A. It wasn't a list of names. It was a communication which gave information in various categories which might be useful to the committee. It was information of the same nature as a committee investigator working in the New York area in the employ of the committee would have furnished. It included tips on individuals who had attended communist meetings and included information on what took place at communist meetings. I am going too far. I am saying it, and I have fallen into Mr. Rauh's trap.

These communications which we received from this informant contained material of this nature. I am unable to say what this particular letter that contained Mr. Shelton's name also contained with specificity. It did contain information of this nature, because all of the communications from this particular informant did contain information of this particular nature.

Q. How can you say that if you have no independent memory of this letter?

A. Well, I can say it on the basis of my recollection that I have seen a substantial number of communications from [fol. 273] this informant. I am familiar with the writing style. I know that they were usually one or two pages. They sometimes covered the front and the back of a sheet. They were single-spaced, typewritten, and the information given was always given with the utmost succinctness. I know that we never received a letter from this individual which only contained one item of information. They were always packed with items of information of possible value to the committee.

Q. How many pages was this letter, Mr. Sourwine?

A. I am sorry, sir, I don't remember.

Q. Was this a letter paragraph by paragraph on each of the fifteen or eighteen or a discussion and then a list?

A. No, it wasn't a discussion and a list, but I don't think it was a paragraph by paragraph on each of fifteen or eighteen persons either.

You asked me, or perhaps it was Mr. Hitz who asked me initially, how many persons were mentioned in this letter, and my judgment was fifteen or eighteen different persons.

That was about average for the letters which we received from this particular informant. There would also be information which did not consist of names. That is the best I could tell you, sir.

Q. How many of the fifteen or eighteen didn't have first names?

A. Sir, since I don't remember any of the other names, I [fol. 274] can't answer that question.

Q. You can't state whether any of them didn't have a first name, can you?

A. I cannot.

Q. Now, where was this letter postmarked?

Mr. Hitz: Excuse me. I object to that. I think that is getting beyond the scope.

The Court: The objection will be sustained.

By Mr. Rauh:

Q. To whom was the letter addressed?

A. To me.

Q. To you personally?

A. Yes, as chief counsel of the Internal Security Subcommittee of the Senate.

Q. But you have turned it over to Judge Morris?

A. Well, sir, it was a committee document, not personal to me. When I left the committee, Mr. Morris became chief counsel. He acquired the safe and I presume has changed the combination, and is the proper custodian of the committee's top secret documents.

Q. Did it have a return address on it?

A. I don't believe that any of these had a return address on them, Mr. Rauh.

Q. Did you discuss this with Judge Morris at the time, the receipt of this letter?

[fol. 275] A. I have no independent memory of doing so, but I am sure that I did, because my practice was to discuss the receipt of such letters with Judge Morris when I talked with him either in person or over the telephone. I don't believe that I discussed this letter with him in detail, because at that time he was not connected officially with the committee.

Q. But you generally discussed the letters you got from this informant and other matters with him during that period?

A. Now you have added "other matters" to your question. I did frequently discuss other matters with Judge Morris. He has been a friend of mine for quite some time. If you mean to imply did I improperly discuss any committee business with him, no. I did discuss with Judge Morris usually the fact that I had received another letter from his confidential informant.

Q. Did you have a name for this informant with Judge Morris? I mean, did you call him "X" or "Johnny?"

A. We had a code name and, as a matter of fact, we did frequently refer to him as "X."

Q. As "X?"

A. Yes, sir.

Q. And he knew who "X" was and you didn't know who "X" was?

A. That is correct.

[fol. 276] Q. Do you have some "Xs" that he doesn't know about?

A. Yes, sir.

Q. Oh, you have some confidential informants that don't talk to Judge Morris?

A. That is right.

Q. And he has some that don't talk to you?

A. That is right. And Mr. Mandel has some that don't talk to either of us, and other committee investigators have sources that don't talk to anybody else.

Q. Was Judge Morris on the bench at the time you were discussing these matters with him?

A. That is my memory, sir.

Q. I believe you testified that these fifteen or eighteen names were not all connected with the Times, did you not?

A. As I remember, I testified that I didn't know that they were all connected with the Times. I don't think that they were. I doubt if we ever received a letter from this informant which was limited in names only to persons on the Times. It would have been most unlikely.

Q. Was there any connecting link that you recall in the fifteen names or eighteen names or were they just picked at random, with no connecting link?

A. Well, we come back to this problem, Mr. Rauh. I don't

[fol. 277] remember a specific fifteen or eighteen names. I

have given you as best I can as an estimate the number of names that were in the letter. Since I don't remember specifically any one of the names, and I don't remember specifically the circumstances about it, I can't answer that question, I am sorry.

Mr. Rauh: We feel we are being barred from the letter, if Your Honor please, and having the witness relying upon lack of memory, even though it is only a year ago, and I think this particularly strange from a witness who keeps asking people about things that happened twenty years ago. We would request that he be allowed to read the letter so that he can answer some of these questions about it.

The Court: The request will be denied.

By Mr. Rauh:

Q. Was the informant, to your knowledge, on the Times; that is, was "X" on the Times?

A. I don't know.

Mr. Hitz: Excuse me, sir. I object to that. I think that is irrelevant and immaterial.

The Court: The objection will be sustained.

By Mr. Rauh:

Q. Do you know anything about "X?"

A. I know what I have told you about him, sir. "X" was an individual known to Mr. Morris. He was an individual [fol. 278] who, when we began hearings with a series, so-called, which Mr. Burdette was the first important witness in, began to volunteer information that was helpful in that series of hearings. He is a person whose tips and information had checked out where we had checked it through. He was a person who Mr. Morris stated to me he knew and knew to be reliable. He was a person concerning whom Mr. Morris told me he thought it best for the protection of the identity of the informant that he wasn't even going to tell me who he was, and I accepted it on that basis and understood it on that basis.

Q. Is it your testimony that the committee first heard from "X" subsequent to Burdette's testimony?

A. No, sir.

Q. When did the committee first hear from "X?"

A. I don't know the exact date. You see, "X" furnished information to Mr. Morris—whether all orally or all written or a combination of the two, I don't know—during the time that Mr. Morris was associate counsel of the subcommittee and before he became a judge in New York City.

Q. I believe your testimony, sir, was that "X" was giving information for two years. Could you date the two-year period?

A. I said for more than two years, to my knowledge, for more than two years.

Q. Well, date the "more than two years," please.

[fol. 279] A. Well, "X" was, I am sure, giving information to the subcommittee in 1955. "X" has continued to give information to the subcommittee right down to the present time.

Q. What part of '55 did "X" start giving information?

A. I am unable to say whether he first started in 1955, but it is my understanding that he was giving information to the subcommittee in the early part of 1955.

Q. That is more than two years?

A. Well, sir, '55 and '56 would be two years, and this is January, '57. It was my judgment, sir, and still is, that he gave information to the subcommittee over a period in excess of two years. I can't prove it to you.

Q. Well now, what was the reference, then, to the Burdette testimony which came in June of '55? What is the connection of that with "X?"

A. Well, as I said, the information we got from "X" was very much like the information we would have received from a committee investigator who was working for pay. He tried to give the committee information which would be useful to the committee in what it was going forward with, and when we had public sessions on a subject. we could look to begin to get information from "X" on that subject, and we did. When we had the testimony from Mr. Burdette, then we began to get information from this informant, not ex-

[fol. 280] clusively, but in his letters, we began to get information dealing with the matter of communist infiltration in mass communications.

Q. Now, I believe you said that this information subsequent to Burdette was helpful to the committee?

A. Yes, sir, I so regarded it.

Q. And you said, I believe, that people were called as a result of it?

A. Yes, sir, I am sure they were.

Q. Since they were called publicly, I don't suppose there is any confidentiality about this. Who among the eighteen called at the hearings on January 4, 5 and 6, 1956 were names given by "X?"

A. I am sorry, sir, I would be unable to say without refreshing my recollection.

Q. Well, how did you know that he had been helpful if you don't remember who it was he was helpful with?

The Court: I think that question you might argue to the Court, but I don't believe you need to argue it with the witness.

Mr. Rauh: All right, sir, I will desist.

By Mr. Rauh:

Q. What was the pseudonym on the letter?

A. I would prefer not to answer that unless the Court orders it.

The Court: I think that is a confidential part of the [fol. 281] letter which the Court said it wasn't going to disclose.

By Mr. Rauh:

Q. It wasn't a pseudonym of, say, Napoleon Bonaparte?

A. Mr. Rauh, again, if the Court feels that I should answer that question, I would like to. If I am not going to answer it, there is no point in narrowing the field down little by little.

Mr. Rauh: I was trying to narrow it down, because it seems to me relevant. A pseudonym very often gives away the seriousness with which one takes an anonymous letter and it is sometimes determined by the pseudonym, and it was for that purpose I was trying to get the pseudonym clear, your Honor.

The Court: I remember the witness testified yesterday, in addition to the way the letter was drafted, as to the witness' familiarity with the information coming from this, plus the pseudonym. Now as to the spelling of the pseudonym or what it was, I don't see the materiality of it.

By Mr. Rauh:

Q. Do you have any reason why you used "X" in your discussions with Mr. Morris when you had a perfectly valid pseudonym to use?

Mr. Hitz: I think that is irrelevant and immaterial.

[282] The Court: Objection sustained.

By Mr. Rauh:

Q. In what fields had this "X" given information to the committee?

A. To my knowledge, in the fields of communist activity. That is rather a broad field. I can narrow that down. Virtually all of the information we got from this informant was related to communist activity. He gave on occasion information with respect to what took place at communist meetings. He gave on occasion lists of persons who attended closed meetings of the party. He gave on occasion names of individuals who would provide information for the committee either as informants or as witnesses. He gave on occasion the texts of communist documents, and he gave on occasion general information about the aims and purposes of the Communist Party in particular areas.

Q. Was this information also turned over to the Federal Bureau of Investigation?

A. I am unable to say.

Q. You had the letter. Did you or didn't you turn over the letter that came from "X" that you say includes Mr. Shelton to the FBI?

A. I am sorry, I understood initially that you had asked whether the informant gave it also to the FBI. If you are asking whether the committee gave it to the FBI, sir, I [fol. 283] consider that a confidential matter between the committee and the FBI, and I don't intend to answer the question unless the Court orders it.

Mr. Rauh: I ask that he be instructed to answer this question. I don't believe this letter exists, and this is the very point of the thing. If the letter had existed, of course, they would have turned it over to the FBI, and I ask that he be instruced to answer.

Mr. Hitz: I object to the question: irrelevant and immaterial.

The Court: I think it is irrelevant and immaterial whether he turned it over to the FBI or whether the committee kept it, counsel, and the objection will be sustained for that reason.

Mr. Rauh: I shall desist, sir.

By Mr. Rauh:

Q. Are you able to name one person named by "X" at any time over this more than two-year period who has been called before a public session of the committee?

Mr. Hitz: I object: irrelevant and immaterial.

The Court: I will permit him to state whether he is able to. I will not permit him to state who the persons are.

Mr. Rauh: Excuse me, sir, I would rather not have that. He can simply say, "I am able," and then you wouldn't let [fol. 284] me ask him to state it.

The Court: No, I am not going to require this witness to. Because of the character of these hearings, and for the reasons that I stated in overruling your motion as to the confidential information, I am not going to compel this witness to tell.

Mr. Rauh: In that event, I would rather withdraw the question, because if you simply allowed—

The Court: I have ruled, counsel.

Mr. Rauh: Then I will withdraw the question.

The Court: Very well.

Mr. Rauh: I would like to state my reason for withdrawing the question so the record may contain it.

The Court: You may put your reason in.

Mr. Rauh: My reason for withdrawing the question is that it would have permitted the witness to say he was able, without my being able to test out in fact whether he was able by stating the names.

The Court: The record will show that is counsel's reason for withdrawing the question.

By Mr. Rauh:

Q. Did you know prior to testifying yesterday that Mr. Hitz was going to ask you concerning the contents of this letter?

Mr. Hitz: I object: irrelevant and immaterial.
[fol. 285] The Court: The objection is sustained.

By Mr. Rauh:

Q. Did you make any attempt to refresh your recollection about the contents of this letter before you testified yesterday?

Mr. Hitz: I object. It is repetitious.
The Court: Objection sustained.

By Mr. Rauh:

Q. Has "X" ever identified someone who turned out not to be what "X" said he was?

A. So far as I know, no, but I want to qualify that answer by stating that not all of the information furnished the committee by "X" has been checked out by any means.

Q. Has any member of the committee or committee staff interrogated "X?"

A. I do not know. It is possible that Mr. Morris has interrogated, asked questions. He told me he knew the man. I presume he talks with him on occasion, and I would hazard a guess that he has asked him questions, but that is all I know about that subject.

Q. Has "X" ever been called in executive session?

A. Not knowing his identity, sir, I don't know. He has never been called as "X," certainly. I doubt if he is a person who has appeared before us, but he may be.

Q. Did the letter use the words, "a Shelton," or "some [fol. 286] Shelton," or "Shelton?"

A. I am sorry, sir, I am unable to quote precisely the words that were in that letter.

Q. Your testimony was not intended as a quotation from the letter?

A. It was not. It was intended to give you the substance of the information that was furnished by this informant.

Q. Did the letter contain any statement by "X": "Shelton had worked on PM?"

A. I don't believe it did. I know what you are getting at there. One of the Sheltons that I told you about—we had a little bit and piece of information about a Shelton, it concerned a Shelton who had worked on PM, and that is the reason I asked Mr. Shelton the question about it. I do not remember that this letter contained any information about the Shelton who was named in this letter having worked on PM.

Q. You don't remember that it didn't, though, do you?

A. I don't remember that it didn't. I am quite sure in my own mind that it did not, because I think I would have remembered the information which was furnished in that letter.

Q. Why would you have remembered that but none of the fifteen or eighteen names, Mr. Sourwine?

[fol. 287] A. If you were to mention, sir, the name of a person whose first introduction to the committee, so to speak, came from this confidential informant, I believe I would know that, if we had carried the thing on and called that person before us as a witness. It is a much different thing to attempt to sort out of a recollection of many names which I know were provided by this informant the particular name or names which were in a particular letter which also contained the name of Mr. Shelton. I just can't do it, sir, I am sorry.

Q. Was the name of James S. Glasser in that letter?

A. I am unable to state, sir. I don't remember specifically the names of any persons who were in that particular letter with the name of Mr. Shelton.

Q. Was the name David Fine in that letter?

The Court: Now, counsel, the witness has testified about three times that he doesn't remember the names in that letter, then you go back and start over again.

Mr. Rauh: Sir, may I just explain what I am trying to do?

The Court: I think I know what you are trying to do.

Mr. Rauh: I was giving the list of the eighteen who testified before the Senate committee in open session. One of those eighteen was Shelton. That is the one name he can remember. I would like to see if any of these other names [fol. 288] were in there and see if he doesn't remember Shelton's name because he can't remember anybody else's.

The Court: The Court has ruled, Mr. Rauh, and I am not going to rehash the same subject matter here over and over again.

Mr. Rauh: I have no further questions.

Mr. Hitz: No questions, Your Honor. Thank you, Mr. Sourwine.

The Court: Do you conclude the testimony, gentlemen, on both sides?

Mr. Rauh: No, sir.

OFFER IN EVIDENCE

I would like to offer the affidavit of Matusow, which was referred to in the cross examination of Mr. Sourwine this morning.

The Court: I thought you offered that document.

Mr. Rauh: No, sir. I offered the report of the committee which contains extracts from the affidavit but does not contain the part of the affidavit which we believe was particularly relevant and which shows the hostility of the committee to the Times.

The Court: Very well, you may mark it.

Mr. Rauh: I would want to have this marked and then offer it. This is the file copy of the committee, and some arrangement will have to be made to withdraw it and find another copy, and I will try to work that out with the [fol. 289] committee.

(Defendant's Exhibit 9 was marked for identification.)

The Court: I assume there are copies available.

Mr. Rauh: The only part of this that we seek to offer, Mr. Hitz, is Exhibit No. 7, appearing on Page 139 of the document.

Mr. Hitz: Hav. you offered it?

Mr. Rauh: I offer it now.

Mr. Hitz: We do not object.

The Court: Let me see it.

What part are you offering?

Mr. Rauh: I am offering the Exhibit 7, sir, and its relevance is that Paragraph 5 thereof was omitted from the report of the committee, but Paragraphs 3 and 4 were included. The purpose of the offer of 5 is to demonstrate the hostility of the committee by withholding the part that reflected favorably on the Times and including only the part which reflected unfavorably.

The Court: I will overrule the objection.

Mr. Hitz: He didn't object.

The Court: I thought he objected. I see. He said he had no objection. Well, that makes it better.

(Defendant's Exhibit 9 for identification was received in evidence.)

[fol. 290] Mr. Rauh: I believe that concludes our testimony, Your Honor.

Mr. Hitz: We have nothing further, Your Honor.

The Court: Do you want to argue this case, gentlemen?

Mr. Hitz: I would like to submit it without argument.

Mr. Rauh: I would like to argue the case, sir.

The Court: I am going to permit you to argue it if you want to. I am just making inquiry.

Mr. Rauh: Yes, I would like to argue the case.

The Court: How much time do you want, Mr. Rauh, twenty minutes?

Mr. Rauh: I have the ten points which we mentioned this morning; they are, roughly, the same points, only in justice to their merits now, I will try to do justice to them in twenty minutes, sir.

The Court: Well, I will give you twenty or thirty minutes, whatever you need.

Mr. Rauh: Is Mr. Hitz going to argue it?

Mr. Hitz: I wonder if the Court would permit me to waive my summarization of the Government's case and permit me, nevertheless, to make a reply, if need be, to Mr. Rauh.

The Court: I think that is legitimate in Oklahoma and I assume it is up here. You may proceed.

[fol. 291] Mr. Rauh: I am sorry, I am terribly sorry.

The Court: He is waiving his opening argument. He merely wants to answer you.

Mr. Hitz: If it appears to be advisable.

The Court: Yes.

ARGUMENT ON BEHALF OF DEFENDANT

Mr. Rauh: The defense contends that the Government has failed to prove what, if any, was the question under inquiry by the committee when it called defendant. Mr. Hitz, in answer to an oral question during our oral request for a bill of particulars, stated that the inquiry was the full scope of the resolution. He said as to the second asking that the Government contends and the indictment states that the inquiry being conducted was pursuant to this resolution. We do not feel and it is not the case that there was any smaller, more limited inquiry being conducted. This committee was conducting the inquiry for the purposes contained in the resolution and no lesser purpose. So that in that sense, the asking No. 2 of counsel will be supplied by his reading the resolution.

The Court: You are referring to the resolution that was introduced in evidence here—

Mr. Rauh: Yes.

The Court: —in three parts?

Mr. Rauh: Yes. Mr. Hitz was referring there to Reso-

[fol. 292] lution 366.

The Court: In three parts?

Mr. Rauh: That is correct, sir.

And therefore we have a bill of particulars, if Your Honor please, which states that the question under inquiry, which is what Your Honor has to find these questions pertinent to under Section 192, is the full scope of 366.

The Court: I would like to have you particularly direct your argument to Section 3, if you don't mind. I might tell you the Court has some idea now that the inquiry might have been pertinent to Section 3.

Mr. Rauh: Yes, I shall do that.

My first point at this stage, if Your Honor please, is that there has been a variance between the bill of particulars, in which Mr. Hitz claimed that the question under

inquiry was S. 366, and the testimony of the Government that the question under inquiry was a number of other things which Mr. Sourwine then detailed. In other words, there is no testimony in this record that the question under inquiry is what Mr. Hitz said it was, namely, the full scope of S. 366. In other words, the Government has failed to prove a question under inquiry from which this Court can rule that the questions are pertinent.

As I understand the Government's burden, it is, first, to prove what the question under inquiry is and then to show [fol. 293] that these questions are related to it. Now I state that the Government has failed to prove that 366 was the question under inquiry, and since that was their statement in the bill of particulars, we have a fatal variance in their proof.

I will submit for the Court's consideration our copy of the transcript at the time that the bill of particulars was asked and responded to. It is part of the record, so it doesn't seem to me to be necessary to offer it as part of the record, but simply—

The Court: It is part of the record?

Mr. Rauh: Yes, sir, it is part of the record, but I don't know if you have it available to you.

The Court: Well, I haven't had it available, but I will have it available.

Mr. Rauh: I will submit it here.

If the Government has failed to prove exactly what the inquiry is, as we claim they have failed to prove it, then they have, per se, failed to prove that these questions were pertinent, because they cannot be pertinent to an indefinite inquiry. But if the Court should overrule our contention that they have not proved S. 366 is the question under inquiry, then we do get a question of pertinency and a question of pertinency, then, under Section 3 of S. 366.

Now, Section 3 provides: "* * * that the extent, nature [fol. 294] and effects of subversive activities in the United States, its territories and possessions, including, but not limited to, espionage, sabotage and infiltration by persons who are or may be under the domination of the foreign government or organizations controlling the world communist movement or any movement seeking to overthrow the Government of the United States by force and violence."

The Government and the committee read this as a delegation of power in the field of communism completely unlimited, that there is nothing in the area of communism today or how far back that they cannot go. I do not so read it, nor do I believe it will be read that way when the final rulings come on this, because that assumes that the committee was given a power apart from legislation.

It seems to me that Section 3 is limited by the inherent limitation on all investigations that they have a legislative purpose, and I say to Your Honor in all sincerity that there was no legislative purpose suggested here in any way, shape or form, and Your Honor can read the entire three days of hearings at which Shelton testified and you will not find one question about legislation. I find it strange that in three days of hearings, with eighteen witnesses, many of whom were cooperative with the Government completely, there wasn't one request: Can we do something about that? Can you think of how we can improve this? This was not [fol. 295] an investigation to find legislation. This was an investigation just to show these people to the public, and that takes it outside of Section 3 on the ground of pertinence, because I believe written into Section 3 as a part thereof unspoken is that to be pertinent, it must be pertinent to a legislative purpose.

Now it seems to me further that the Government has failed to prove that the question under inquiry by the committee, when it called defendant, was within the authority alleged in the indictment. In other words, not having proved a specific question under inquiry, there was no way of showing whether this inquiry was within the authority of the committee, and, fourthly, we contend that the Government has failed to prove that subcommittee in question was conducting hearings pursuant to the specific authority alleged in the indictment or to any other grant of power from the United States Senate.

Now, may I please have Government's Exhibit 3?

The Government's entire case for authority in the subcommittee is based on which there is testimony that this is an extract from the minutes of the Judiciary Committee, and I am assuming that this is an extract from the minutes of the Judiciary Committee: "RESOLVED, by the Committee

on the Judiciary, that the Special Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws under S. Res. 366, 81st Con-
[fol. 296] gress, be continued as a special subcommittee of the Committee on the Judiciary during the 84th Congress, and that the committee report in appropriate original resolution favorable to the Senate for this purpose."

If Your Honor please, this is not a delegation of authority. The authority went from the Senate to the Judiciary Committee. This is not a delegation. This is a statement that the committee under S. Res. 366 is continued. That is not a delegation that all of the powers under S. Res. 366 were delegated. I find it strange that the witness for the Government was unable to produce one document at any time in the past, with this committee in effect for six years, that said that we, the Judiciary Committee, delegate the authority which we have under S. Res. 366 to this subcommittee. Certainly, I think Mr. Hitz or someone has suggested—I think Mr. Sourwine suggested it—that the resolution itself, because it says "any subcommittee," thereby transferred the power to the subcommittee.

The Court: Did this subcommittee, that you now indicate had no authority, report back to the full committee?

Mr. Rauh: Do they, sir?

The Court: Did they in this case?

Mr. Rauh: There have been no reports yet. We have had testimony here that there was no report.

The Court: Didn't they report back—

[fol. 297] Mr. Rauh: Oh, you are referring to the report Mr. Eastland from the Committee on the Judiciary submitted—

The Court: I am assuming that after this subcommittee held this hearing and determined to start contempt proceedings against the defendant, that they probably reported back to the full committee and the full committee, in turn, probably reported it back to the Senate. The reason I say that is because the record shows that the Senate authorized—

Mr. Rauh: I am sure that happened, sir.

I would say that was no authority whatever, and here I cite to you a square holding in—

The Court: There is no such thing as ratification?

Mr. Rauh: Rumley is perfectly clear on that. That is exactly what happened in Rumley, and they said it wasn't authorized, sir. And it seems to me that you couldn't build authorization on such a ratification basis, and one reason I particularly refer to this is that there are serious constitutional questions involved.

Now, if Your Honor please, I think maybe we both have the same dilemma, and the dilemma is the fact that this case is being tried while the constitutional issues that are involved are before the Supreme Court. But while, concededly, certain Court of Appeals' decisions seem to run against the constitutional issues that we are raising, I would [fol. 298] be the first to admit and to concede this. I happen to be counsel in the case that raises this in the Supreme Court, the Watkins decision, which is on certiorari from the decision of the Court of Appeals here.

Now that raises, as I say, a dilemma, at least for me, and I am not sure but what it doesn't raise some for Your Honor. We suggested to Judge Laws that the trial might be withheld until the Watkins case had been decided, and Judge Laws, and I am sure he gave this thorough consideration, rejected our request and said to go ahead with the trial. So that we are now before Your Honor at a time when the constitutional questions to which I am about to address myself are unclear and without final resolution. I am not suggesting the question of what Your Honor is bound by and not suggesting that you are not in some ways bound by some of the decisions, even though they are on appeal.

What I am suggesting is that with the constitutional issues in the flux that they are, and with at least their serious nature having been recognized by the grant of certiorari by the Supreme Court in this case, one ought to give serious consideration to whether there is a non-constitutional ground on which Your Honor could base this case without reaching the serious constitutional questions, and I suggest to Your Honor that there has been an absence of proof of a question under inquiry, and because there has been [fol. 299] absence of proof under questions of inquiry, absence of proof of pertinency to those questions, absence of proof of authority in the subcommittee, that the case

should be decided on those grounds to avoid the constitutional issues to which I would like to advert briefly if I am still within my allotted time.

The Court: You may.

Mr. Rauh: It seems to me that the failure to prove a valid legislative purpose is, as I say, relevant to S. 366, because I think that is a built-in condition, but it is also clearly relevant to the Constitution of the United States. If there is no legislative purpose, there is no power in the committee, and none of the decisions of the Court of Appeals have ever suggested the contrary. I think there are those who read the Court of Appeals' decision to say something like this: either you plead the Fifth Amendment or you are guilty of contempt. I have heard that said among my fellow lawyers. I don't believe that that is a proper reading of the various Court of Appeals' decisions from Barsky to Watkins to Barenblatt and Sacher. I do not believe that is what they are saying. I believe the Court of Appeals has said in these particular cases: We say there was a legislative purpose.

The Court: Barenblatt goes pretty far, doesn't it?

Mr. Rauh: It goes pretty far, if Your Honor please, but [fol. 300] it doesn't go to the point that in the absence of a legislative purpose one would still uphold the conviction. In fact, what I am suggesting, if Your Honor please, and I agree with you, Barenblatt goes pretty far—what I am suggesting is that those are cases where the court has found—I believe in some cases—one case is on appeal to the Supreme Court—the court has found a legislative purpose where I might not have found it or you might not have found it, but in each of those cases, still, they have agreed that there had to be a legislative purpose, and I say here, one will look in vain for the legislative purpose in hauling eighteen men, fourteen New York Times and one brother of a New York Times man, before the committee and never asking them one question related to legislation. I say that the proof is perfectly clear in the Government's own case that there wasn't the slightest interest or intent in legislation and nothing has ever come of this hearing or ever could come of it.

Now, there are two constitutional issues in addition to this. I put the previous constitutional issue on the absence of a legislative purpose. If one does not have one, the legislative purpose, the doctrine of separation of powers, then, prevents the action of the committee. But the First Amendment has two facets in this case. The first facet is the one that is involved in some of the other cases. Now here I [fol. 301] think I would be less than frank if I did not say that I think the decisions of the Court of Appeals do foreclose our First Amendment point, unless Your Honor feels free to consider it, because it is presently pending in the highest court. I have no desire to argue that the Court of Appeals has not in similar situations rejected a plea of the First Amendment. I simply state it—it is my obligation to state it on the record—but I am not suggesting that there is not precedent here against us. I do say on the question of a legislative purpose, however, that there, the precedents, while they have gone far to find legislative purpose, do not foreclose us, because they have never said that the inquiry could be valid in the absence of a legislative purpose, and therefore I would distinguish and could in all sincerity argue for an acquittal on the basis of the absence of legislative purpose where I would feel that I could not distinguish the First Amendment cases in the Court of Appeals.

The Court: What have they said that particularly constitute the legislative purposes in some of these other cases?

Mr. Rauh: In the Watkins case, which is the case that is now pending in the Supreme Court, they said that the mere statement of the committee chairman at the opening of the set of hearings in which he mentioned a statute was sufficient. I am contending in the Supreme Court that the [fol. 302] mere statement does not prove a legislative purpose. But at least you had there, if Your Honor please, a statement of a particular statute that they were considering as a legislative purpose. So that I would say that while I hope some day to be able to say that that was wrong, even though that was correct, that would not foreclose the proposition that if there was no shred of substance of a legislative purpose, that the defendant could be convicted.

The Court: Wasn't the statement of counsel at the beginning of one of these hearings that we are proceeding

under Section 3 here, which we will consider as a legislative purpose, and then proceed as they have in this case? You say there were no questions asked.

Mr. Rauh: Well, if Your Honor please, Section 3 simply says the type of thing that you can go after, namely, something related to communism, but it does not say the purpose with which you can go after it. It does not suggest that; indeed, I do not think that it was intended that that information could be obtained except—

The Court: Perhaps we don't quite understand each other. These cases which you say you now concede so far as the First Amendment is concerned, so far as the Circuit Court of Appeals is concerned, they have about said that is it. In some of these other cases, where the court has decided other than a statement made by committee counsel [fol. 303] in the beginning, what questions were propounded? What were some of the reasons given for the court saying it was, that the case was within the legislative jurisdiction of the committee?

Mr. Rauh: One case I know that I am clearest on is the Watkins case. The Barenblatt case I have before me. They examined the record and they found that there was a legislative purpose. I must say I am not exactly clear on what the evidence was there. There is a reference to the Veterans Readjustment Assistance Act, and there may be a reference to other statutes.

The Court: Haven't they about said that even just asking the witness a question: "Are you a communist?" or "Do you belong to an organization, any of these front organizations?"—I mean, whether you agree with it or not, but hasn't the Circuit Court of Appeals just about said that that constitutes legislation purposes?

Mr. Rauh: Not quite. I partially agree. I don't want to make a statement that I don't honestly believe. I don't think they have quite said that. They have gone very far to find it, and they have gone terribly far to find it, but they have always found it in some action. I don't believe you can find it in any action here. I admit they have gone awfully far to find it, but they have always found it, and here, I say, one cannot find it.

Now when I conceded the point about the decisions of [fol. 304] the Court of Appeals on the First Amendment, I would like to make a distinction there, if I might, sir. I was referring to the general question that has been raised by a person refusing to answer a question about communism.

The Court: I understood, counsel.

Mr. Rauh: There is still the question of the freedom of the press, on which there are no decisions, and that is not foreclosed in any way.

It seems to me that for the Court not to recognize that this was a reprisal against the Times for its criticisms of this committee and of like committees, its criticisms of Senator Eastland's views on various things, and its criticisms of the committee counsel here, is simply to close one's eyes to the reality of the situation.

The unique fact that thirty out of thirty-eight men were from the Times, and the unique fact that that is an executive session, that fourteen plus a brother were from the Times out of eighteen in open session, the fact that those persons that would not have reflected in any way on the Times weren't called in open session, the fact that shortly before this happened the committee put out a report reflecting on the Times and withholding some of the favorable information from the Times, makes it clear in my mind that this was a violation of the freedom of the press. But one doesn't have to say that. It isn't necessary for Your Honor to rule that [fol. 305] to find that there was an absence of a legislative purpose. In other words, it seems to me that the strong point here in regard to what I was trying to bring out from Mr. Sourwine, and Your Honor at times seemed to feel I was going at it a little bit too far, I did that in all effort to protect my client in a serious case before Your Honor, was that I felt that a real answer to a legislative purpose was this purpose.

In other words, there are two ways that I can prove there was no legislative purpose. One is just to show you the record and say there is not one iota of testimony in there concerning any legislative matter or anything leading to it, but there is another way, and that is by indicating the other purpose, namely, the purpose in connec-

tion with the Times. It seems to me that these are two sides of the same coin: the absence of the legislative purpose, from any indication in the record that they were interested in legislation, and the presence of an alternative purpose, which would reinforce the first.

I did not come at this lightly. I am not making this charge in a light feeling, that when you don't have anything else to do, you try your opponent. I make this in all earnestness, that part of the proof of the absence of a legislative purpose is the presence of an alternative purpose, and that, in part, I believe, explains the particular tenacity—

[fol. 306] The Court: Your point is this: You contend there is an absence of a legislative purpose.

Mr. Rauh: Yes.

The Court: Considering the whole record, there was a complete absence of a legislative purpose. That, of course, you say, would be sufficient within itself, but that you have, for the purpose of this case, gone further and assumed the burden, so to speak, by showing that there was not only an absence of a legislative purpose, but the questions you were asking were showing what the real purpose was, namely, to investigate the New York Times. I mean, that is—

Mr. Rauh: Yes. I wouldn't belabor it. That is exactly my point.

Now I don't know, I certainly don't want to reargue the question that flows from the subpoena and from the letter, particularly as your opinion just a few moments ago dealt with this subject, and I believe I should no more than clarify the record as to our position on that. Your Honor has, I think, made clear that—I believe this is correct—that Your Honor feels that the fact there was probable cause by the time of the open sessions, adequate probable cause, even though there was no probable cause at the time of the closed session.

The Court: I said that without completely deciding the [fol. 307] issue, yes.

Mr. Rauh: Then if that is open, I would like to refer to the comparison of the Silverthorne case, and I have the citation in another brief in case Your Honor would

want to look at it, Silverthorne Lumber Company v. United States, 251 U. S. 385.

Now there, one of the Government agencies went in and took some evidence they didn't have any right to, and then having the evidence, they were able to write a beautiful subpoena, naming everything perfectly. They gave the material back and then they subpoenaed it. That subpoena was quashed in a decision by the Supreme Court, and Justice Holmes said that the initial wrong carried over to the second step. That is exactly, in my judgment, sir, what you have here. I wasn't going to argue this—I didn't know you had indicated before, that I once argued after you had ruled, but since you said it was tentative—it seems to me that that is exactly what you have here.

Assuming now, without deciding again, as you were assuming, that there was no probable cause to take him before the executive session, the mere fact that probable cause came from the executive session is not probable cause. There was a wrongful act in here which has to be considered. The Silverthorne doctrine was also affirmed the second time in the second Nardone case, which, I think, is in 308 U. S.

[fol. 308] I am not completely prepared on this, because the Government never suggested yesterday nor this morning the point made by Your Honor, and it took me a little bit by surprise, but I think the Nardone case in 308 U. S. is also relevant.

These are only analogies, because I don't think we have the exact case, but there, the analogy is this, if Your Honor please. That is a case where there was a wire tap and, of course, you couldn't use the wire tap in court. But they used the wire tap to get a lead, and the Supreme Court ordered that the people testifying as a result of those leads couldn't testify. In other words, I think there is some fine Holmes' statement in the Silverthorne case which is also in the Nardone case to the general effect that you can't benefit from the fruits of your own wrongdoing.

The Court: I know that is generally true.

Mr. Rauh: I would say that those two cases come the closest to the situation which Your Honor made as a

hypothetical situation, when Your Honor suggested that you had probable cause at the second hearing, the open hearing, from what had happened—

The Court: I think what I said, if probable cause is necessary, without saying that you have to have probable cause—I might finally say that I thought the man on the street doctrine would do it, but in addition to that, if the [fol. 309] Government does have to have probable cause, then that would probably be the fact.

Mr. Rauh: Yes, I think I understood it, and then maybe just to summarize how we feel about it, you do have to have probable cause, and we cited in our memorandum some cases to support the proposition that you do have to have probable cause, and if you do have to have probable cause, and, of course, only if you have to have probable cause, then, if Your Honor please, we do not feel you can meet that probable cause by pulling a man off the street without probable cause into the first hearing and then say, "Well, we cleaned all that up. We got a new hearing." I think the spirit and analogies of Silverthorne and second Nardone would bar Your Honor, if you consult those, from making that as probable cause. Now you still have open as to whether that requires any probable cause, and we say that it does both under the Fourth Amendment and the Fifth Amendment of due process and the invasion of privacy, that probable cause is required.

Now finally, if Your Honor please, because you have been patient on the time, and I know I have gone over it, I will just state that in our opinion, 366, and particularly Clause 3, is too vague to meet the constitutional standards. Now here again, to be completely honest, I don't believe it is any vaguer than the House committee [fol. 310] resolution which has been upheld for vagueness by the Court of Appeals. I believe they are both too vague. I believe they generally give a roving commission into communist activities. But no such roving commission is warranted, that no man can tell from that roving commission whether he is required to answer questions and, therefore, that this is a violation of the Fifth and Sixth Amendments. However, I only say in all sincerity that this question, too, is in the Watkins case on a similar

roving commission, and the Court of Appeals' decisions have rejected this.

In my judgment, in conclusion, sir, in view of the seriousness of the constitutional issues which will not be decided finally for some time, we would strongly urge the acquittal on the non-constitutional grounds we have urged, and in that way, following the strong policy of the Supreme Court, the avoidance of the basic constitutional questions we have presented. Thank you.

ARGUMENT IN REBUTTAL

Mr. Hitz: Your Honor, I have only one subject I would care to touch on, unless Your Honor asks some questions of me after I have touched on this, and that is to point out the difference between this case and the Silverthorne and the Nardone cases that Mr. Rauh has mentioned.

In each of those cases, there was an illegal act directed to the defendant. In the Nardone case, there was an il- [fol. 311] legal act in the commission of a crime in violation of the Communications Act in tapping his wire. It was a penitentiary offense. The results which came to the benefit of the governmental agency in that case were found to be without justification, without warrant and illegally obtained. In that case, of course, it is different from the situation we have here. There is no question but what there was probable cause, if that be necessary, to have summoned the w ness before the executive session in New York. That was not an illegal act. It wasn't a violation of any statute. It was not a crime to have brought him there, nor did it, as in the Silverthorne case that was held, violate any constitutional right. In the Silverthorne case, the violation of the right of the defendant and the illegal act was a trespass upon him in the nature of an illegal search. We do not have that here. It has been so held in the Chapman case and in many other cases, that an inquiry conducted by a congressional committee is not a search of that person's effects or well being, or whatever, that would violate any possible claim under the Fourth Amendment against illegal search.

So that we have here a perfectly legal act in bringing the defendant before the committee in the first instance. And I say again, it was with probable cause in the very strictest sense. Now the only problem that has confronted [fol. 312] the Court in the trial of this case is not that there lacked probable cause in the subpoenaing of the defendant witness before the committee in the first instance. It was that, as a very technical matter of criminal procedure, the Government was not in a position to produce the particular document that Mr. Rauh finally thought he needed to cross examine the Government witness. So that there is a technical problem arising within the confines of this courtroom which apparently has raised some question in the Court's mind as to the advisable way finally to dispose of that defense contention. It had nothing to do with the merits and the reason for having called him initially. It has to do with the right of the defendant, as he asserts it, to further examine the witness Sourwine upon a document that we say procedurally, and as a matter of comity with another branch of the Government, and for reasons of national security, we preferred not to produce in court. Thank you.

The Court: Let me ask you a question, counsel. The Watkins case, I believe, is the one now before the Supreme Court of the United States, is that it?

Mr. Hitz: Yes, it is.

The Court: If that case was decided adversely to the Government's contention in that case, would that settle the issue in this case here?

Mr. Hitz: It would not. It would depend on what the [fol. 313] ground is. There could be many different reasons for a reversal in that case. I say conceivably. We don't concede any such proposition, but many, many reasons other than a First Amendment question that might control here, might induce the reversal, and I am not showing any lack of a faith in the case when I say that. Thank you.

Mr. Rauh: I have just two comments. First, the Watkins case raises a legislative purpose issue quite similar to this, as well as the First Amendment question quite sim-

ilar, as well as to the vagueness question quite similar. So I think on any one of those three it could probably be determined.

I would like permission, in view of Mr. Hitz' questioning of the applicability of Silverthorne and Nardone, to file a memorandum—it might take twenty-four or forty-eight hours—to file a memorandum on this very question. There seems to be a major question in Your Honor's mind, and I know Your Honor has been concerned and given real thought to the problem that has been raised here, and we would like the permission—I don't know if you can work tonight, because we are liable to be snowed in, I understand. Reports have been coming in that the snow is coming down very fast—but if we could get it done sometime tomorrow, and certainly submit it to Your Honor the first thing the next morning.

The Court: I will be glad to have it tomorrow, I would like to, and will, unless notified to the contrary, render a [fol. 314] final decision in this case by Friday morning at 9:30.

Mr. Rauh: You would like the defendant here at Friday morning at 9:30, sir?

The Court: Yes.

Mr. Rauh: Let's see. Well, I suppose we should get it in as fast as we can, under those instructions.

The Court: But if you want to file a memorandum, of course, I would like to have it as soon as possible. I will give you permission to file it.

Mr. Rauh: I will try to get it in tomorrow, because I am quite confident of the analogy of Silverthorne and Nardone to the proposition,—I am not now rearguing the other points, but to the proposition that the first hearing without probable cause, on that assumption, cannot be probable cause for the second hearing, and I would like to submit it on that general theory.

The Court: Very well.

(Whereupon, at 3:45 p. m., the trial in the above-entitled cause was recessed until 9:30 a. m., Friday, January 18, 1957.)

[fol. 315]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

[Title omitted]

Washington, D. C.

Transcript of Proceedings—Friday, January 18, 1957

The above-entitled cause came on for further trial before the Honorable Ross Rizley, a District Court Judge, at 9:40 a. m.

[fol. 316]

Proceedings

The Court: Criminal No. 1215-56, United States of America v. Robert Shelton.

Are the parties here?

Mr. Rauh: Yes, Your Honor.

The Court: Very well.

This is a case which we tried Monday and Tuesday of this week, I believe, which the Court took under advisement temporarily, and the Court is now ready to render an opinion in this case.

RULING OF THE COURT

The Court: It is charged in the indictment in this case in three counts that the defendant, Robert Shelton, in contempt of the lawful powers of Congress and contrary to law, refused on January 6, 1956 to answer certain pertinent questions propounded to him by the Senate Subcommittee on Internal Security while under oath and appearing as a witness to testify in connection with an inquiry then being conducted by the subcommittee pursuant to lawful authority.

It is the Government's position that the subcommittee, while in the lawful exercise of the powers and duties conferred upon it by pertinent resolutions, caused the de-

fendant to appear before it on the 7th day of December, 1955, in New York City and again on the 6th day of January, 1956, in Washington, D. C., to testify concerning his [fol. 317] knowledge of matters pertinent to the subjects then under investigation and study by the subcommittee in furtherance of the congressional responsibilities in such areas of national concern.

It is further asserted that upon appearing before the subcommittee on January 6, 1956, the defendant refused to answer pertinent interrogatories, including the following questions, when ordered and directed to do so by the presiding officer of the subcommittee:

Count 1 of the indictment:

"Question. Are you, sir, a member of the Communist Party, U. S. A.?

Count 2:

"Did you ever have any conversation with Matilda Landsman?"

Count 3:

"What did you tell them?"

The defendant does not question the Government's proof that on the date and in the place alleged in the indictment he appeared before the subcommittee as a witness while under oath and, after being ordered and directed by the presiding officer to do so, refused to answer the questions set out in Counts 1 through 3 of the indictment. The defendant does not interpose the Fifth Amendment to the United States Constitution in justification of his refusal to answer the questions insofar as such constitutional pro- [fol. 318] vision prohibits compulsory self-incrimination.

It is the defendant's position that the evidence before this Court shows that he was justified in refusing to answer the questions because the subcommittee was acting in excess of its lawful authority (1) in calling him at all, (2) by the Government's failure to prove that any precise question within the authority of the subcommittee was under inquiry at the times in issue, (3) by the Government's

failure to prove that the hearing before the subcommittee on January 6, 1956 was pursuant to the authority set out in the indictment, (4) by the Government's failure to prove that the interrogation of defendant had any legislative purpose, and (5) that the statute defining the offense defendant is charged with committing, read in conjunction with the enabling resolutions of the subcommittee, is so vague and indefinite as to deprive the defendant of due process of law.

The defendant filed his motion for judgment of acquittal at the end of the Government's case in chief and again after all of the testimony was in, urging ten grounds as follows, which points can be fully discussed under the contentions enumerated in the body of this opinion, that is, the five subdivisions that the Court has heretofore referred to:

(1) That the Government has failed to prove what, if any, was the question under inquiry by the committee when [fol. 319] it called the defendant;

(2) That the Government has failed to prove that the questions asked defendant were pertinent to any question under inquiry by the committee;

(3) That the Government has failed to prove that the question under inquiry by the committee when it called defendant was within the authority alleged in the indictment;

(4) That the Government has failed to prove that or January 6, 1956, the subcommittee in question was conducting hearings pursuant to the specific authority alleged in the indictment or to any other grant of power from the United States Senate;

(5) That the Government has failed to prove that the questioning of the defendant and the questions which form the basis of the indictment had any valid legislative purpose. The evidence indicates that, in fact, the committee had no valid legislative purpose in interrogating defendant but, rather, sought to expose him and others to contempt and ridicule, in violation of the constitutional doc-

trine of the separation of powers which places limitations upon the exercise of legislative power;

(6) That the questioning of defendant and the questions which form the basis of the indictment violated the rights of defendant and others to the freedom of speech, as-
[fol. 320] sembly and petition guaranteed by the First Amendment;

(7) That the questioning of defendant and the questions which form the basis of the indictment violated the freedom of the press guaranteed by the First Amendment;

(8) That at the time the defendant was questioned, the committee had no information that he was or had been a communist or a member of a communist-front organization or any information reflecting adversely upon him. The information in the possession of the committee reflected upon Willard Shelton, a well-known and respected newspaperman, rather than on the defendant, who was called entirely by accident, and that under these circumstances, the proceedings violated the defendant's rights of privacy under the First Amendment and were not within any legislative power granted to or exercisable by the committee;

(9) That the defendant's rights under the Fourth and Fifth Amendments were violated by arbitrary and discriminatory subpoenaing of defendant as a witness before the committee when there was no probable cause to believe the defendant had engaged in or had information about communism, subversion, espionage or other matters within the alleged jurisdiction of the committee;

(10) That 2 U.S.C. 192, that is, the contempt statute, read together with the alleged authorization of the sub-
committee, is so vague and indefinite as to deprive defen-
[fol. 321] dant of the due process of law guaranteed by the Fifth Amendment.

And I may say, to all of these questions raised by the defendant, the Court has given very careful consideration.

The defendant is not required to adduce evidence of his innocence in the absence of proof by the Government which establishes the enumerated elements of the charged viola-

tions beyond a reasonable doubt. In criminal prosecutions for contempt of Congress, as in every criminal prosecution, the defendant is presumed to be innocent of the charges upon which he is indicted, and such presumption remains with the defendant until such time as the Government proves beyond a reasonable doubt that as to each count of the indictment, the defendant, while appearing as a witness before a duly authorized congressional committee, was directed and ordered to answer the interrogatory set out, that the specific question was pertinent to matters within the jurisdiction of the committee then under investigation, that the investigation was in furtherance of a proper congressional purpose, and that the defendant refused to answer such interrogatory when so ordered and directed to do so. (See Quinn v. United States, 349 U. S., and Bowers v. United States, 204 F. 2d).

To establish the authority of the subcommittee, the Government introduced the enabling resolution, Senate Reso- [fol. 322] lution 366, 81st Congress, Second Session, 1950, which conferred original authority upon the Senate Judiciary Committee, or any duly authorized subcommittee thereof, directing such body both to make a complete and continuing study and investigation of (1) the administration, operation and enforcement of the Internal Security Act of 1950, (2) the administration, operation and enforcement of other laws relating to espionage, sabotage and the protection of the internal security of the United States, and (3) the extent, nature and effects of subversive activities in the United States, including, but not limited to, espionage, sabotage and infiltration by persons who are or may be under the domination of the foreign government or organization controlling the world communist movement or any other movement seeking to overthrow the Government of the United States by force or violence.

In addition thereto, the Government introduced the resolution continuing such original authority in the Judiciary Committee, or its duly authorized subcommittees, with provisions for expenditures during the 84th Congress and copies of the minutes of the Senate Committee on the Judiciary for January 20, 1955, wherein the subcommittee in question was by resolution continued during the 84th

Congress, as well as a copy of the minutes of the Senate Committee on the Judiciary for February 7, 1955, listing [fol. 323] the names of the Senators appointed to serve upon the Subcommittee on Internal Security. The copies of the minutes of the committee were received in evidence as a part of the official records of the subcommittee over the objection that they showed no authority in the subcommittee. The Government introduced the certification of the defendant's contempt by the United States Senate to the United States Attorney for the District of Columbia, the Senate resolution ordering such certification, and a copy of Senate Report No. 1934, 84th Congress, Second Session, 1956, which sets out the proceedings before the subcommittee giving rise to the citation. The documents are in proper form, and neither their authenticity nor regularity is questioned.

Mr. Julian G. Sourwine appeared as a witness for the Government. His testimony disclosed that at the times in question he was the chief counsel for the subcommittee and personally familiar with the facts and circumstances leading up to defendant's appearances before that body. In substance, the witness testified that the subcommittee had information indicating the existence of communist activity in newspaper and publishing fields in New York City, implicating one Matilda Landsman as being active in the Communist Party and the Typographical Union in that city. Additionally, the witness alluded to confidential information in the possession of the subcommittee which provided names of several suspected communists em- [fol. 324] ployed in various capacities by certain newspapers, including the company which at that time employed Matilda Landsman and this defendant. The witness testified that the subcommittee did not have any information indicating that this defendant was either a communist or had engaged in communist activities. The subcommittee did, according to the witness, have information that one Shelton, who was employed on the news side of a particular newspaper in New York, was informed, if not active, in communist infiltration into the newspaper media of mass communication.

Upon the basis of such information, the subcommittee late in 1955 held an executive session in New York City, in connection with which a summons was issued to one Willard Shelton, at a specific address, requiring his attendance on November 23, 1955, at a time and place certain. The evidence was that the name Willard had been affixed upon the summons by error, for in fact the subcommittee did not possess the first name of the Shelton linked by name to the subversive activity it sought to investigate and study. There is evidence in the record upon the manner in which the defendant's name came to be added to this summons, but the view the Court takes of this subject is that it has no relevancy to this case or any of the issues in it. This is true for the reason that the defendant did not initially appear before the executive session of the subcommittee pursuant to the disputed summons. The sum- [fol. 325] mons served upon the defendant requiring his attendance before the subcommittee on December 7, 1955, was issued on November 23, 1955 by James O. Eastland, Chairman, Committee on the Judiciary and Internal Subcommittee, to Thomas J. Lunney, United States Marshal, Southern District of New York, who according to his official return thereof recited the service of the summons on the defendant by leaving a copy thereof with him at his place of employment on November 29, 1955.

The official transcript of the proceedings before the subcommittee involving this defendant was admitted in evidence without objection. It clearly shows beyond any reasonable doubt that at the time and place alleged in the indictment the defendant appeared before the subcommittee, was sworn as a witness, ordered and directed to answer the three questions set out in the counts of the indictment, and refused to do so. The contentions of the defendant are urged in justification of this established conduct.

I may say that in the footnote there is identified the Senate report which contains the facts relative to the summons that was served upon this defendant issued by Senator Eastland and served by the United States Marshal of New York.

Defendant's contention that the subcommittee exceeded its authority in calling him as a witness under the circumstances of this case is grounded upon several propositions. The technical objections arising from the issuance, service [fol. 326] and return of the summons were predicated upon the apparent belief that the summons originally issued to Willard Shelton was the process relied upon to bring the defendant initially within the jurisdiction of the subcommittee. As previously pointed out, the official transcript of the proceedings before the subcommittee which involve this defendant commenced on November 23, 1955, with the issuance of a summons which was personally served on defendant pursuant to lawful authority on November 29, 1955, and return thereof properly executed that same day. The summons requiring defendant's attendance before the subcommittee is sufficient on its face to bring him within the jurisdiction and authority of the subcommittee, and the Court so holds.

Defendant's contention that the subcommittee exceeded its authority in summoning him under the facts of this case rests upon his interpretation of the First Amendment to the United States Constitution. It is the position of the defendant that the authority of Congress to require the attendance of witnesses before its duly authorized committees investigating matters within the legislative powers of Congress is limited by the individual citizen's right of privacy guaranteed by the First Amendment. It is then argued that where a committee seeks to summons a witness for the purpose of taking testimony, there must exist a probable cause for the committee to believe that such [fol. 327] person possesses pertinent information on the subject under lawful investigation or such summons is without force or effect.

Proceeding upon the assumption that probable cause in the sense employed by defendant is required for issuance of a valid summons by the Congress, it is argued that the only evidence of probable cause in this case for the calling of this defendant as a witness was contained in the confidential letter linking the name Shelton with the subject under inquiry. This line of argument was relied upon in an effort to secure the confidential letter from the

files of the subcommittee for inspection and introduction into the record as the best evidence of probable cause. The Government objected to the request for the letter on the grounds that it is not material or relevant to issues in the case; that it contains confidential information, including the names of additional persons known or suspected to be active in the communist movement; it contains the pseudonym of a confidential informant of the subcommittee.

The Court carefully considered defendant's contention respecting the requirement of probable cause for issuance of a congressional summons, and the relevancy of the confidential letter to the issues in this case. The application for production of the letter was denied at trial, and the Court is convinced that such ruling was proper in light of the law applicable to this case and the nature of the letter, [fol. 328] as well as its relevancy in this matter.

The Court has examined at length the authorities bearing upon the extent of the investigative powers of Congress. The extent of the power has been defined in authoritative decisions by the Supreme Court written after prolonged deliberation. There can be no doubt about the power of Congress, and its committees, to investigate as a necessary attribute of the duty and authority to legislate (McGrain v. Daugherty, 273 U. S.; Sinclair v. United States, 279 U. S.), and such investigative power has been characterized as being coextensive with the power to legislate, subject to the limitations imposed by the Fifth Amendment to the United States Constitution and the right of privacy in matters unrelated to a valid legislative purpose.

There is a complete want of precedent, we believe, for the proposition defendant urges, which in simplest terms would limit the powers of a duly authorized committee of the Congress in conducting an inquiry for a legitimate legislative purpose by permitting such committee, and hence Congress itself, to compel the attendance and testimony of only such witnesses as the courts might judicially determine were reasonably expected to be in possession of pertinent information.

The doctrine of separation of powers and a rightful regard for the authority of the legislative branch of the [fol. 329] Government, we believe, refutes a judicial eval-

uation of those matters which clearly are within the discretion of the Congress, which alone is responsible for the exercise of the authority from which the disputed power arises.

The established limitations upon the congressional investigative powers, which require a legislative purpose and inquiries pertinent thereto, provide ample protection, we believe, to the private affairs of witnesses appearing before duly authorized committees of the Congress. In this connection, we call attention to Barsky v. United States, by the Court of Appeals for the District of Columbia, reported in 167 F. 2d; Quinn v. United States, supra; Barenblatt v. United States, Circuit Court of Appeals for the District of Columbia, No. 13,327, decided January 3, 1957.

Beyond the fact that the Court does not find judicial power to determine what witnesses Congress may call in furtherance of its legislative purposes and compel pertinent testimony thereon, the record of this case discloses beyond any reasonable doubt that the subcommittee had information in its possession at the time defendant was initially summoned to appear before it which established a reasonable cause for requiring his testimony. The subcommittee had information, apart from the confidential letter, which indicated communist infiltration into the New York Typographical Union and elements of the New York newspapers, including the one by which the defendant was [fol. 330] employed.

In light of these facts, it was not only reasonable for the subcommittee to call the defendant and other employees from the press organization at which he worked, such a procedure by the subcommittee appeared expedient in furtherance of its express duties. I call attention in that connection to Watkins v. United States, 233 F. 2d, and Barsky v. United States, supra.

I might say at this point that I gave careful consideration to the contention that, because some members of the subcommittee felt so chagrined they didn't like the New York Times, that it was an attempt to investigate the New York Times rather than communist infiltration. But I

think the evidence clearly shows, by exchange of telegrams and by other inferences, that no one was contending that the New York Times was a communistic newspaper, the well-known newspaper that it is—exchange of telegrams, I believe, between the editor of the Times, or at least some official of the Times, and the committee specifically shows that, and, of course, if it was necessary, this Court would say he would give judicial notice to the fact that the New York Times is not a communistic newspaper. But that doesn't mean that because a newspaper isn't communistic that Congress doesn't have a right to investigate people who work for the newspapers.

The legislative purpose underlying the investigation and [fol. 331] studies committed by the Senate to the committee is concisely expressed by the enabling resolutions. Legislation in the field of foreign subversion and infiltration by subversives in this country is clearly within the congressional authority. See Barenblatt v. United States and Barsky v. United States.

The defendant's contention that the Government failed to establish that any precise question within the authority of the subcommittee was under inquiry at the time in issue is not established by the evidence in this case, and the Court contends no reasonable doubt to that fact. The statement of the chairman of the subcommittee at the commencement of the hearings in which the defendant appeared in Washington, D. C., and testified, clearly shows that the subcommittee was then engaged in attempting to ascertain the extent and nature of communist infiltration into news dispensing agencies. Such an inquiry is manifestly within the duties imposed upon the subcommittee by the enabling resolutions, and the authority of the subcommittee is measured by only the enabling resolutions creating it and charging it with specific duties. The scope of a given hearing by a duly authorized subcommittee must be confined to those matters fairly within the delegated authority; beyond that, the subcommittee is not confined to a categorical subject within the area delegated to it in pursuance of law. At least that is this Court's opinion and this [fol. 332] Court so held in the case of the United States v. Knowles.

The Court finds that the hearing in question dealt with the existence and extent of subversive infiltration in the news media and was within the authority of the subcommittee. The Court also finds beyond a reasonable doubt that defendant was fully aware of the precise subject under inquiry by the subcommittee at the time of his appearance before it in Washington, D. C., as evidenced by his own prepared statement objecting to the jurisdiction of the subcommittee.

Defendant's contention that the hearing before the subcommittee on January 6, 1956 was not shown to have been pursuant to the authority set out in the indictment, we think, is contrary to the evidence. The Government placed the pertinent resolutions and minutes in the record. These documents show the original authority of the Committee on the Judiciary from the United States Senate (Senate Resolution 366, 81st Congress, 2nd Session), the continuation of that committee's original authority to the time in question, and the authority of the subcommittee, as well as its composition, at the time in question. This evidence is adequate in all respects to show the authority of the subcommittee to act in the premises beyond a reasonable doubt.

The contention of the defendant that the hearing at [fol. 333] which he testified and from which the indictment arose was not in furtherance of a legislative purpose proceeds on the assumption that a failure to have a specific legislation in contemplation, or a failure to show that legislation was in fact enacted, establishes an absence of legislative purpose. This argument is patently unsound, we think. The investigative power of Congress is not subject to the limitation that hearings must result in legislation or recommendations for legislation. See: in re Chapman, 166 U.S. 661; Townsend v. United States, by the Circuit Court of Appeals, D. C.; also Barsky v. United States.

The evidence defendant introduced to support his contention that a non-legislative purpose prompted the subject hearings is wanting in probative value and wholly insufficient to cast a doubt upon the true congressional purpose underlying the delegation of the authority to the

subcommittee or the purpose of the subcommittee in conducting the hearings in question. Indeed, where the subcommittee proceeds within the authority lawfully delegated to it by Congress, it would appear doubtful that want of legislative purpose could be established. United States v. Josephson, 2nd Circuit, 165 F. 2d 82, and other authorities cited in the opinion.

The Court finds that the hearings in question were, beyond a reasonable doubt, conducted in furtherance of a legislative purpose and within an area subject to the legis-
[fol. 334] lative powers of the Congress.

The statute under which defendant is charged is said to be so vague and indefinite, when read in conjunction with the enabling resolutions defining the authority of the subcommittee, as to deprive a defendant appearing before the subcommittee of due process of law. The statute in question has been judicially construed in many cases; the meaning to be attached to the words appearing in the provision is clear. The statute itself is neither vague nor indefinite in its proscriptions and mandates.

Where a witness appearing before a committee of the Congress is fully apprised of the extent of the authority of the body, and is in fact fully apprised of the precise subject within the committee's authority which is then under inquiry, as was the defendant in this instant case, the duty of the witness is clear: Any question pertinent to the matter under inquiry must be answered, except insofar as the Fifth Amendment may provide justification for a refusal to answer. See United States v. Rosen, also Quinn v. United States. The contention of statutory vagueness is without merit.

The question which constitutes Count 3 of the indictment, the Court believes, is not pertinent to the subject established by the evidence to have been under inquiry at the time defendant testified. This count of the indictment, Count 3, therefore, will be dismissed. Upon the evi-
[fol. 335] dence adduced at trial, it is the judgment of the Court that the defendant is guilty as charged in Counts 1 and 2 of the indictment beyond a reasonable doubt. That verdict will be entered, present bond of the defendant will

be continued pending sentence, and the cause will be referred to the Probation Officer. I say to counsel that I would like, if possible, perhaps, to pronounce sentence, providing the Probation Officer is ready, a week from today, on the 25th. You will be notified. I take it that the defendant resides in New York.

Mr. Rauh: Yes, he does, Your Honor.

The Court: If we could notify you Wednesday, would that be ample time for the defendant?

Mr. Rauh: It certainly would.

Would you care to hear me on that subject today or next Friday?

The Court: I would prefer to hear you, Mr. Rauh, on the day that the defendant comes up for sentence.

Mr. Rauh: That is entirely satisfactory to us, if Your Honor please.

The Court: Yes, I prefer to hear you that day.

Mr. Rauh: And we should submit such information as we would care to to the Probation Officer?

The Court: Yes. I would suggest that maybe that would be possible today.

[fol. 336] Mr. Rauh: We will do that right now.

The Court: Yes, sir.

That will be all as far as this case is concerned.

(Whereupon, at 10:10 a. m., the trial proceedings in the above-entitled cause were adjourned.)

[fol. 337] Reporter's Certificate to foregoing transcript (omitted in printing).

[fols. 338-350] [File endorsement omitted]

[fol. 351]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

[Title omitted]

Washington, D. C.

Transcript of Proceedings—Friday, January 25, 1957

The defendant in the above-entitled cause appeared for sentencing before the Honorable Ross Rizley, a District Court Judge, at 9:55 a. m.

[fol. 352]

Proceedings

The Clerk: United States v. Robert Shelton.

The Court: I think at the time I rendered the judgment in this case, Mr. Rauh, you said you would like to be heard at the time of sentence, and the Court will be very glad to hear you at this time.

Mr. Rauh: If Your Honor please, I filed a memorandum with Your Honor.

The Court: I have read your memorandum.

Mr. Rauh: I don't really care to repeat that. I know that Your Honor has examined our memoranda throughout this case very carefully. Even when you have not agreed with their contents, you have done us at least the honor of examining them carefully, and I am sure you have examined this carefully.

I would only say in summary of it, if Your Honor please, that this is a very young man, with an unblemished record. His employer is willing to give him a chance. I really think I could use the word "beg," when I say we urge you also, if Your Honor please, to give him a chance, with this young and unblemished record, and either, therefore, not to impose a jail sentence or, if Your Honor does feel called upon to impose one, that Your Honor places him

on probation and give him a chance which his record up to date, I believe, warrants.

[fol. 353] The Court: Does the District Attorney have any statement he wants to make in this case?

Mr. Hitz: We have no recommendation, Your Honor.

The Court: Very well.

Mr. Shelton, do you know of any legal reason why the Court should not pronounce sentence at this time?

The Defendant: No, Your Honor.

The Court: I have read the memoranda submitted by your counsel, also letters that have come from your employers and others recommending very strongly probation.

I want to say in that respect that during the brief tenure of this Court on the bench, we have employed very liberally the discretion that the Court has in respect to probation, and I personally think it should be used in permitted cases, especially where the defendant has a contrite heart, I might say, and an attitude of regret and a genuine awareness of the crime for which he has been convicted and a genuine desire for reformation and rehabilitation.

The Court has closely observed you during the progress of the trial, and I will say that so far as your personal demeanor before the committee of the Congress, you didn't display the contemptuous attitude that many in the same category do. On the other hand, the Court is doubtful if the factors that I have mentioned, which I think are things [fol. 354] that I should take into consideration in the question of probation—the Court is doubtful whether they actually exist in your case. In other words, I am not sure, but I doubt if the same circumstances should arise tomorrow—perhaps I should say it this way—I am inclined to believe that you would probably still defy the Congress.

Mr. Rauh: May I be heard, sir?

The Court: Yes, I will be glad to.

Mr. Rauh: I didn't want to add anything, and I certainly didn't want to interrupt, but there is a problem that I have discussed with Mr. Shelton over the period that I have known him, which is, of course, only a short period, and it relates to that problem, and I think I can—indeed, I thought it was conceivable that Your Honor might say what Your Honor has said in the form of a question, and

I have discussed with Mr. Shelton the answer that he would give under those circumstances. So I think I shall, if you will permit, ask the question and answer it, if I may, for Mr. Shelton here. It is something like this:

Your counsel put to the Judge the proposition that these matters had not been finally decided and that the question might arise differently if they had been finally decided. What would your position be under those circumstances? And Mr. Shelton and I had agreed that his answer to you would be that if the law required, after final decision, these [fol. 355] answers, that they would be forthcoming. In other words, I had more or less expected, in view of the statement that I had made as counsel, that the law still remained in some doubt, not in Your Honor's mind, I am quite clear, but in the review of this matter by the Supreme Court, and I, therefore, thought you might on the very ground of reformation put to him this question, and I think the answer would be as I have given it to you, sir.

The Court: Mr. Rauh, I want to say this to Mr. Shelton. I haven't observed in the trial of any case, I think, during this term here or terms elsewhere anyone that has been more active in behalf of his client's rights than have you. I shall certainly say, regardless of what may happen here, that he has been very ably defended.

Of course, I don't know, this Court might be reversed. They do reverse courts, so far as courts of appeals are concerned, which this Court, I think, is bound by law to give considerable weight and precedence to. In my own view, the crime has been committed; otherwise, I wouldn't have found him guilty.

Mr. Rauh: I didn't want my remarks to be interpreted to the contrary.

The Court: They are not. I understand it perfectly.

Of course, it is always a sad duty when the Court has [fol. 356] to sentence someone, but the Court has that responsibility. You ought to be commended here on the letters that have come in here on your behalf from your employers, but they don't ultimately, finally have the responsibility. I am the one that has the responsibility.

This threat of communism in this country, as I said a week ago, is one of the very disturbing things to this

Court, and the Court can take judicial notice of the fact that it is still going on. The press and the radio reports this morning matters that are very disturbing from the standpoint of communism and its threats to our republican form of Government, and in this case I do not feel that I can put you on probation.

JUDGMENT AND SENTENCE

And so it will be the judgment and sentence of this Court that on Count 1, of which you were convicted, that you pay a fine of $250 and to be sentenced to the custody of The Attorney General for a period of six months; and on Count 2, that you pay a fine of $250 and be sentenced to the custody of The Attorney General for six months. The six months' sentences, as far as the commitment to custody is concerned, will run concurrently. The fines will stand only as to the two counts. That will be all.

Mr. Rauh: Will Your Honor continue the bond pending appeal?

The Court: Yes, the bond will be continued pending— [fol. 357] I assume you will appeal, Mr. Rauh, and the bond will be continued. Of course, you will be required to put up a different bond when you appeal. The defendant will remain on the bond now standing.

Mr. Rauh: And he may be in our custody until he makes the new bond? I gather that for the next hour, he may be remanded to our custody while the new bond is being made up?

The Court: Oh, yes, that will be all right; yes, continue the bond, sure. That will be all.

(Whereupon, at 10:05 a. m., the proceedings in the above-entitled matter were adjourned.)

[fol. 358a] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 359]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13737

ROBERT SHELTON, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

Appeal From the United States District Court
for the District of Columbia

OPINION—Decided June 18, 1960

Mr. Joseph L. Rauh, Jr., with whom Mr. John Silard was on the brief, for appellant.

Mr. William Hitz, Assistant United States Attorney, with whom Messrs. Oliver Gasch, United States Attorney, Lewis Carroll and Harold D. Rhynedance, Jr., Assistant United States Attorneys, were on the brief, for appellee. Mr. John D. Lane, Assistant United States Attorney, also entered an appearance for appellee.

Before Washington, Bastian and Burger, Circuit Judges.

Burger, Circuit Judge: This is an appeal from conviction and judgment after trial in the District Court for contempt of Congress growing out of refusal to answer [fol. 360] questions asked by the Senate Internal Security Subcommittee.*

Shelton, a copy editor of a New York newspaper, was subpoenaed and appeared, first in executive session in

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* The circumstances under which the appeals in this case and seven other contempt of Congress cases came on for hearing in this court appear in footnote 2 of the opinion in No. 13464, Gojack v. United States, decided this day.

New York City on December 7, 1955, and later in open sessions of the Senate Internal Security Subcommittee in Washington, about a month later. At both hearings he refused to answer questions on the subject of membership in the Communist Party and as to whether he had ever had conversations with a certain named person identified by the Committee as a Communist. He was convicted for contempt on two counts for refusal to answer questions.[1] At Shelton's request he was tried without a jury.

The Subcommittee was operating under a Senate Resolution adopted in 1950,[2] and continued thereafter,[3] which empowered it to make a complete and continuing study and investigation of (1) the administration, operation and enforcement of the Internal Security Act of 1950; (2) the administration, operation and enforcement of other laws relating to espionage, sabotage, and the protection [fol. 361] of the internal security of the United States; and (3) the extent, nature and effect of subversive activities in the United States, including, but not limited to, espionage, sabotage, and infiltration by persons under the domination of the foreign government or organizations controlling the World Communist movement seeking the overthrow of the United States Government by force and violence.

Under this Resolution the Subcommittee had previously heard testimony from one Winston M. Burdett, a well known journalist, foreign correspondent and newscaster, who had been a member of the Communist Party from 1937 to the early 1940's. Burdett cooperated fully with the Subcommittee and gave information including names

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[1] These questions were:

(1) "Are you, sir, a member of the Communist Party, U.S.A.?"

(2) "Did you ever have any conversation with Matilda Landsman?"

[2] S. Res. 366, 81st Cong., 2d Sess. (1950).

[3] S. Res. 7, 82d Cong., 1st Sess. (1951); S. Res. 198, 82d Cong., 1st Sess. (1951); S. Res. 314, 82d Cong., 2d Sess. (1952); S. Res. 46, 83d Cong., 1st Sess. (1953); S. Res. 172, 83d Cong., 2d Sess. (1954); S. Res. 49, 84th Cong., 1st Sess. (1955); S. Res. 58, 84th Cong., 1st Sess. (1955); S. Res. 209, 84th Cong., 2d Sess. (1956); S. Res. 174, 84th Cong., 2d Sess. (1956).

of persons with whom he had worked; he did not refer to appellant. Later the hearings involved in this case were called as part of a program "to pursue every lead which developed out of the Burdett testimony."[4]

Some time before appellant was first subpoenaed to appear the Subcommittee had received a letter stating that one "Shelton" who worked for the New York Times was informed about if not active in a "Communist Group" and knew of the Communist Party activities in newspapers. The author of the letter was not identified in the record but there was testimony that he was known to the Subcommittee as a source of reliable information on other occasions. Thereafter a subpoena was issued addressed to "Willard Shelton." In attempting to make service the process server learned that there was no "Willard" Shelton employed by the New York Times, but that a "Robert" Shelton was employed as a news copy editor. The Subcommittee then authorized amendment of the subpoena to add the words "or Robert Shelton," and it was served on Robert Shelton, appellant here.

[fol. 362] The record indicates that at the outset of appellant's appearance before the executive session, the Subcommittee was uncertain whether appellant was indeed the person they thought to be in possession of information about Communist Party activities in newspapers generally or in his own newspaper. He was interrogated as to his background in order to clear up the question of identity, and in the course of that interrogation was asked and refused to answer substantially the questions set out in the margin, footnote 1. He was recalled 30 days later when the Subcommittee was holding public sessions.

At the opening of the public hearings in Washington on January 4, 1956, the Chairman pointed up the purpose of the inquiry, stating that the Subcommittee "could not be unmindful . . . that among the persons involved in this investigation have been many who were or are mem-

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[4] Hearings before the Senate Subcommittee to Investigate the Administration of the Internal Security Act and other Internal Security Laws of the Committee on the Judiciary, 84th Cong., 2d Sess., pt. 17, at 1587 (1956).

bers of the press, and that the international Communist conspiracy has as one of its primary aims the influencing of public opinion, thus carrying on its psychological warfare against the United States and its institutions from inside by methods of penetration."[5] Early in the hearing Senator Hennings, a member of the Subcommittee, stated:

> . . . that it be generally known and understood that this is not an attack upon any one newspaper, upon any group of newspapers as such, but an effort on the part of this committee to show such participation and such attempt as may be disclosed on the part of the Communist Party in the United States or elsewhere, indeed, to influence or to subvert the American press.[6]

The Subcommittee thus defined the general area of this series of hearings.

Immediately before appellant was called to the stand at the January 6 session, Senator Hennings also commented in part:

> [fol. 363] I think that no one will quarrel with nor take issue with the fact that this committee has the right to inquire into all efforts or, indeed, all consummations of efforts of the Communist Party to infiltrate newspapers or other media of communication. . . .
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> . . . And I do think in the interest of justice and in the interests of preserving the integrity and the high standing of this committee, we should be particularly cautious and aware of the possibility of unnecessarily calling one before us who may have nothing to add to the general subject matter of our inquiry and who may be seriously damaged in his own personal and professional life.[7]

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[5] *Ibid.*

[6] *Id.* at 1588.

[7] *Id.* at 1718-19.

The Chairman at the same time referred to a telegram from the Long Island Press asking the Subcommittee to do what it could to emphasize that it had led in efforts to expose Communist infiltration of the press and that it was supporting the Subcommittee's work. The Chairman commented: "The committee is not investigating the Long Island Press or any other newspaper. We are aware of the fact that the Long Island Press was alert to the danger of the Communist infiltration from a very early date and was aggressive and effective in combating this danger in its own organization."[8] Upon being called to take the stand at this point appellant challenged the Subcommittee's power to call him as a witness.

Shelton was then asked the questions set forth in the indictment and he refused to answer. He was duly cited for contempt for his refusal and upon being tried was found guilty as charged. Appellant did not rely on the Fifth Amendment to the Constitution as a reason for his refusal to answer questions.

Appellant urges numerous errors in the proceeding below. Briefly stated, they are:

[fol. 364] (1) That Part 3 of Senate Resolution 366 is too vague and imprecise to authorize or permit the Subcommittee to compel answers.

(2) That appellant could fairly refuse to answer the questions since he was not told the "subject under inquiry," as required.

(3) That the pertinency of the questions to the subject matter was not explained.

(4) That the very nature of the questions violated appellant's First Amendment rights.

(5) That the indictment was faulty in failing to set out the "question under inquiry."

(6) That appellant need not answer any questions as the Subcommittee did not have "probable cause" to call him.

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[8] *Id.* at 1718.

(1) The challenge to Senate Resolution 366, Part 3, as too vague to authorize the Subcommittee to compel answers to any questions must fall for several reasons. The Resolution as a whole and Part 3 in particular is more explicit than the House Resolution sustained by the Supreme Court in *Barenblatt* v. *United States*, 360 U.S. 109 (1959). The criticism of vagueness seemingly directed at the House Resolution in *Watkins* v. *United States*, 354 U.S. 178 (1957), does not in any event apply to Senate Resolution 366. In the recent *Barenblatt* case the Supreme Court confirmed the power of Congress to investigate activities of this character. Since its creation the Subcommittee has devoted itself to investigating subversive activities and Communist infiltration in many phases of American life, including infiltration in key industries, in television, radio and the press. Congressional awareness and approval of the work of the Committee can be found in numerous reports to the Congress by the parent Committee, and in repeated appropriations for its work.[9] In one report to the Senate the Committee specifically referred to the so-called "Burdett hearings" and other sessions in New York, relating to Communist efforts to [fol. 365] infiltrate newspapers.[10] Whatever may have been argued at one time as to possible infirmities or vagueness in Resolution 366 under which the Committee was acting, the *Barenblatt* case and the legislative gloss attached to the Resolution has put this issue to rest.

(2) Appellant contends he was not informed of the subject or topic under inquiry and hence could not fairly decide whether he could be compelled to answer. The record discloses that at the opening of the hearings the investigation was expressly described as directed at the efforts and activities of the "international Communist conspiracy" to influence American public opinion through the press. Senator Hennings also stated the hearings

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[9] See note 3, *supra*.

[10] Report of the Subcommittee on Internal Security to the Committee on the Judiciary for 1955, S. Rep. No. 1385, 84th Cong., 2d Sess., at 4 (1956).

were for the purpose of showing "such participation and such attempt as may be disclosed on the part of the Communist Party . . . to influence or to subvert the American press." [11] In a colloquy with the Chairman only moments before appellant took the stand, Senator Hennings restated the same idea in these words "this committee has the right to inquire into all efforts, or indeed all consummations of efforts of the Communist Party to infiltrate newspapers or other media of communication." [12] Thus the subject matter was explained with the required clarity so that appellant could fairly evaluate the risks of refusing to answer. That the explanations given by the Chairman and Senator Hennings varied in terms did not in any way impair the clarity of the explanation. The broad subject matter of Communist Party infiltration and subversion, the narrower subject of efforts to influence American public opinion and the specific effort to use the press to implement these objectives were spelled out [fol. 366] with utmost clarity not only in the remarks of the Subcommittee member but also in the context of the hearings. In the course of the hearings to pursue the "Burdett testimony" 18 persons connected with communications media were called.[13] The interrogation of these witnesses was directed at Communist activities in the press and communications field generally.

Moreover appellant's statement of objections to being questioned and his responses reveal his complete awareness of the subject matter of the inquiry. A great part of the statement[14] is concerned with the dangerous con-

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[11] See note 6, *supra*.

[12] See note 7, *supra*.

[13] Six news reporters, one newspaper indexer, one motion picture exhibitor, an ex-bookseller, one newspaper proofreader, one magazine editor, two linotype operators, one copy editor, two news copyreaders, one ex-journalism professor, one newspaper education editor.

[14] "The question also threatens freedom of the press as guaranteed by the first amendment. I believe no other governmental body in the free world would call a newspaperman and demand to know his political beliefs and associations. However unknowingly or

[fol. 367] sequences which the Committee's investigation would have on the freedom of the press. There is no difficulty in discerning his belief that a newspaperman should be immune from questions of the kind he refused to answer.

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unwittingly, gentlemen, in the quest for internal security, you are threatening long-standing and hard-won American liberties. The Supreme Court has held that—

"* * * the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose. Nor does it extend to an area in which Congress is forbidden to legislate * * *"

A body is the sum of its organs, a machine the sum of its parts. An attack on the smallest component of a body or machine is an attack on the whole. An invasion of my individual rights is an invasion of the rights of the paper that employs me and an invasion of the rights of the newspaper profession as a whole. This subcommittee is nudging the end of my copy pencil, it is peeking over my shoulder as I work. This subcommittee is engendering the fear that soon it will be looking into newsrooms all over the country.

If, as a result of my being called here, I am put under mental pressure to change one word or one sentence in material that I edit, an abridgment of freedom of the press will have taken place. Demanding to know what is going on in the mind of a newspaperman without inhibiting a free press is impossible. Your question acts as a form of 'prior restraint' on publishing, telling newspaper executives who should or who should not be on their staffs.

A journalist's credo I wholeheartedly support is 'to give the news impartially, without fear or favor, regardless of any party, sect, or interest involved. * * *' But by being called before you to answer about my political beliefs and associations I am placed in fear of having my loyalty considered suspect if I do not, while freely exercising my sound conscience, answer this committee's questions. I am obliged to seek your favor to guard my personal integrity, and that of the paper for which I work. . . .

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Let, me, in complete sincerity, cooperate with you by saying this: One of the greatest contributions that can be made toward the internal security of the United States would be to promote the maintenance of a press that is free and unfettered and unafraid; a press and newspapermen that will criticize what they please and support what they please. It is a rightful role of the press to be a watchdog over government. It is not a rightful role of government to be a watchdog over the press. Let the reader at his breakfast table be the judge of whether a paper suits him or not, and by extension, whether the men who produce that paper suit him." S. REP. No. 1934, 84th Cong., 2d Sess., 15, 16 (1956).

While he was firm and clear in arguing that the questions were beyond the scope of the Committee's authority and that he was protected from inquiry by the First Amendment, he at no time asserted that the subject matter of the inquiry was too vague. Apart from the demonstrated clarity of the topic, we note that appellant sought no explanation of subject matter as he was entitled to do.

Significantly, here, as in the *Barenblatt* case, appellant's [fol. 368] refusal to answer related to his own Communist Party affiliation, rather than the activities or membership of others. As in *Barenblatt*, the Subcommittee had a right to know if the witness was a member of the Communist Party, for that identification rendered more meaningful any testimony given by him concerning his own activities or concerning the presence or absence of Communist Party efforts to infiltrate the press. An inquiry into a possible conspiracy for infiltration or subversion of the press embraces the right to command the witness to say whether he is a member of the conspiracy, subject, of course, to the right of the witness to take refuge in the Fifth Amendment. *Barsky* v. *United States*, 83 U.S.App.D.C. 127, 167 F.2d 241, *cert. denied*, 334 U.S. 843 (1948).

We find no substance in the contention that appellant was not aware of the topic and subject under inquiry.

(3) While appellant challenged the Subcommittee's authority, he did not, as we have noted, ask that the subject be stated. Nor did he object to the questions on the grounds of pertinency. In response to a challenge to the authority of the Subcommittee the Chairman advised appellant that the questions were directed at whether he was a part of the Communist conspiracy[15] then under investigation. The second count question involved whether he had any knowledge as to a Communist attempt to infiltrate Typographical Union No. 6, and whether he had ever discussed with Matilda Landsman the question of Communist activity in that union. Matilda Landsman was known to the Subcommittee as an employee of the New York Times who had, on directions of the Communist Party "downgraded" her job from news work to the

[15] See Barsky v. United States, 83 U.S.App.D.C. 127, 167 F.2d 241, *cert. denied*, 334 U.S. 843 (1948).

press room in order to carry out "missionary" or "colonizing" work in the typographical employees. We hold that the pertinency of the questions was revealed by their con- [fol. 369] text and that no additional explanation of pertinency was called for absent an objection to the question on that ground. No particular form or words are required to raise that objection but the interrogators must in some way be made aware that the witness objects to or is in doubt about the relationship of the question to the subject under inquiry. Appellant failed to do this, hence there was no duty on the Subcommittee to say more.[16]

Moreover the *Watkins'* standard on this score is qualified:

> *Unless* the subject matter has been made to appear with undisputable clarity, it is the duty of the investigative body, *upon objection* of the witness on grounds of pertinency, to state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto. (Emphasis added.) 354 U.S. at 214-15.

This definition makes plain that if the subject matter has been made clear no explanation need be given, absent objection or request. In other words, *two* things must coincide to require an explanation as to pertinency: (1) that the subject matter be *unclear,* and (2) the witness must object.

(4) Essentially appellant argues that as a newspaperman he has a special immunity from questions as to possible membership in the Communist Party. He argues that this investigation was directed at his newspaper to discourage all "newspapers from hiring persons of unpopular, unorthodox or minority views and associations . . . ." This, it is argued, results in "elimination of persons from the press who hold or once held unorthodox, unpopular

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[16] We note in passing that with respect to certain questions at both the executive and public sessions appellant frequently made objections explicitly on pertinency grounds. See S. Rep. No. 1934, *supra* note 14, at 4, 8, 13, 18. None of these questions formed the basis of his conviction.

or minority views or associations [and] is as effective a [fol. 370] form of censorship as the deletion of the material they contribute to the press." Appellant's Brief, p. 32. This First Amendment argument is, in large part, that any inquiry such as this, directed to a member of the press is an impairment of the freedom of the press because it tends to intimidate all those engaged in that activity. But this inquiry was in no sense an investigation into the press as such, but into the question whether the constitutionally guaranteed freedom of the press was being used to undermine that very freedom and the foundation on which it rests. *Barenblatt* authorizes such inquiry. The investigatory power of Congress flows from the right of the government to preserve itself and its institutions. The important right of the press to be free and independent is not impaired by an inquiry into possible abuse of the right which is directed at destroying the very freedom the First Amendment assures. Indeed in the *Barenblatt* opinion in response to a similar argument the Court sharply pointed out that "investigatory power in this domain is not to be denied Congress solely because the field of education is involved." 360 U.S. at 129. Similarly, appellant's profession as a newspaperman does not preclude inquiry into his activities as a possible member or in behalf of the Communist Party. See *Barsky* v. *United States, supra.* Inquiry into generally protected areas must be subject to careful judicial scrutiny but the rights are not protected absolutely and they must yield to the superior right of Congress to know whether there is a dangerous abuse of those rights.

(5) Appellant urges that his conviction must be reversed because the indictment did not specifically recite the "question under inquiry." No authority has been cited which suggests that Rule 7(c), FED. R. CRIM. P., requires an indictment under the statute to recite details of the authority and scope of inquiry.[17]

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[17] Sacher v. United States, 102 U.S.App.D.C. 264, 267, 252 F.2d 828, 831 (1958), held that an indictment under this statute need not "recite details of the authority and scope of the inquiry" and that holding stands undisturbed by the Supreme Court's action in Sacher v. United States, 356 U.S. 576 (1958).

[fol. 371] (6) Finally, appellant challenges the Subcommittee's subpoena power. The essence of this attack is that the subpoena under which appellant testified was invalid because the Committee had no reason to call appellant. This argument by its terms rests on the theory that in order to call appellant the Committee must show it had reason to believe he was or had been affiliated with or had information about Communists. Information about Communists is not the exclusive property of Communists. Many persons innocent of Communist Party connections and bitterly hostile to Communism may possess important information about such activities. Hence a belief or showing that the Committee must have reason to believe the witness is or once was a Communist or in sympathy with them is unnecessary. The second phase goes to the argument that a legislative committee has no power to employ compulsory process without some reason to believe the witness has information about the subject under inquiry. There is relatively little authority on this general subject but *United States* v. *Orman*, 207 F.2d 148, 154-5 (3d Cir. 1953), suggests that congressional committees may not subpoena private citizens at random "indiscriminately in the mere hope of stumbling upon valuable information and to cite them for contempt if they refuse to answer. . . . " The Supreme Court in *Barenblatt* noted the absence of evidence "that the Subcommittee was attempting to pillory witnesses," and absence of evidence that "petitioner's appearance as a witness follow[ed] from indiscriminate dragnet procedures, lacking in probable cause for belief that he possessed information which might be helpful to the Subcommittee." 360 U.S. at 134.

A careful review of this record satisfies us that the authority of the Subcommittee to conduct the hearings is plain, that there was full awareness on the part of the [fol. 372] appellant that the subject matter was the possible infiltration of Communists into the radio, TV, and the press, including his own paper and that the questions were plainly pertinent to the topic. There is not the slightest indication in this record of an effort or desire or a tendency to pillory the appellant or other newspapermen or

to call them indiscriminately without reason. After the important revelations of Winston M. Burdett, it was surely not a "dragnet" process to call appellant as a member of the working press to check on possible Communist Party activities among his fellow employees. The proper balance between individual rights and the broad public interests at stake here must be resolved in favor of the latter.

Other errors assigned by appellant have been carefully considered but we find no error which warrants reversal.

Affirmed.

[fol. 373]

IN UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Criminal 1215-56

No. 13737

ROBERT SHELTON, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

Appeal From the United States District Court for the District of Columbia

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Before: Washington, Bastian and Burger, Circuit Judges.

JUDGMENT—June 18, 1960

This Cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On Consideration Whereof It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

Per Circuit Judge Burger.

[fol. 375] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 376]

SUPREME COURT OF THE UNITED STATES

No. 246, October Term, 1960

ROBERT SHELTON, Petitioner,

vs.

UNITED STATES.

ORDER ALLOWING CERTIORARI—March 27, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.